00023625

THE
ASIATIC SOCIETY OF BOMBAY
TOWN HALL, BOMBAY-400 023.

Digitized with financial assistance from the
Government of Maharashtra
on 06 February, 2016

THE LIVES

OF

TWELVE EMINENT JUDGES

OF THE LAST AND OF THE PRESENT CENTURY.

BY

WILLIAM C. TOWNSEND, ESQ. M.A.

RECORDER OF MACCLESFIELD.

23625 a c

IN TWO VOLUMES.

VOL. I.

XX-C-11

LONDON:

PRINTED FOR

LONGMAN, BROWN, GREEN, AND LONGMANS,

PATERNOSTER-ROW.

1846.

923.442
Tow/Liv
23625

PREFACE.

THE praise bestowed by the *Quarterly* and *Edinburgh Reviews* * upon two of the lives in these volumes, as originally published in the *Law Magazine*, has induced the Author to believe that a collection of Memoirs of Eminent Modern Judges would not be unacceptable to the profession and to the public generally. The characters and fortunes of those great men who have added reverence to the judgment-seat during the last half century can scarcely fail to furnish topics of varied interest, and amusement. Commencing with the mighty master of common law, Sir Francis Buller, their history includes those eloquent holders of the Great Seal, Lords Loughborough and Erskine; the three admirable chiefs of the Queen's Bench, Lords Kenyon, Ellenborough, and Tenterden; those memorable Masters of the Rolls, Lord Alvanley and Sir William Grant; those scientific lawyers, the one in real property, the other in common law, Lord Redesdale and Sir Vicary Gibbs; and ends with the fortunate brothers—not more fortunate than deserving—Lords Stowell and Eldon.

In the biographies of these revered magistrates, whose contemporary course reflects light upon each other, and illustrates the legal annals of our times,

* Reviews of the Life of Lord Eldon by Twiss, and of Lord Stowell.

there are comprehended records of eloquent debate, and able statesmanship, and useful legislation; many bright passages of national history; reports of those eventful trials which move the feelings, and stir the blood; the struggles and triumphs of advocacy; the narrative of early disappointments and severe privations; of persevering diligence, determined fortitude, and unwearied hope; of the lucky chance and crowning victory; the clouded opening of their fortunes and its serene close; the mode and manner, so well worth studying, in which these intellectual prizemen, "bankrupt of health and prodigal of ease," achieved wealth, titles, and fame. We trace the gradual ascent of the surgeon's boy, and the barber's son, up the rugged steep, and rejoice over the course of the brothers Scott, working their way from the coal-fitter's yard at Newcastle, to the height of civil greatness—teaching the valuable lesson fraught with courage and constancy to the profession, that neither lowliness of birth, nor absence of fortune, nor delay of opportunity, is sufficient to crush or subdue the progressive and expanding force of talent and industry. But as the bold counsel

"Tu ne cede malis sed contra audentior ito,"

could be addressed with safety to the true mariner alone, it is the real lawyer only who should derive encouragement from these Memoirs and may afford to be sanguine.

In proportion, however, to the interest, is the peril of the task, the topics and persons discussed being comparatively modern. The fear of inflicting pain upon survivors by any indiscreet statement, an

anxious wish not to wound the sensitive feelings of relatives by any mistaken impression or unguarded criticism, the dangers of error,—have long deterred the Writer from a work which he would not even now have undertaken but for the sanction of those who are interested in the truth of his details. He has been studious to reconcile the most scrupulous sense of discretion and delicacy with a faithful and accurate likeness of each of the distinguished Personages, inherently too great to have their features distorted by flattery. The use of biography teaching by examples would be imperfect, and the portraiture of legal worthies as deceitful as that of the limner of royalty when required to paint without shade, were defects of temper cautiously suppressed, and all infirmities of character planed away. The Author feels too deep a reverence for the sanctity of the judicial character to be wilfully guilty of detraction. In the most excited times of party violence their order has been respected. When all that we hold most venerable and worthy of esteem was assailed with calumny, when the peers and prelates incurred groundless imputations, not a whisper was breathed against *the mirror*-like purity of the judicial character; upon its absolute integrity there did not rest even for a moment the gliding shadow of suspicion.

From a consideration of delicacy due to relatives, the biographer has in every instance where there were immediate descendants surviving, requested and obtained permission to publish these Memoirs. To the Earl of Eldon, to Lords Kenyon, Alvanley, Redesdale, and Tenterden, and to the Hon. Thomas Erskine, his

acknowledgments are especially due for the courtesy with which the permission was conceded. For the accuracy of the facts and justice of the comments, he is alone responsible.

A third of the contents of these volumes is new, the remainder has been carefully revised, and diligence used—with what success the reader must decide—to make them correct.

The number Twelve has been accidental, and not chosen from any supposed analogy which the Twelve Common-Law Judges were once supposed to bear to the Twelve Tribes, or Twelve Tables, or Twelve Cæsars. Indeed, as only six of these Judges belong to the Common-Law courts, the numbers, on Sir Edward Coke's reasoning, would be scarcely apposite.

To mention all to whom the Writer is under obligation, might savour of ostentation. The principal are named in the notes. He would be guilty of ingratitude, however, were he not to record his thanks to A. Hayward, Esq., Q.C., for many years the accomplished editor of the *Law Magazine*.

Temple, May 29. 1846.

CONTENTS

OF

THE FIRST VOLUME.

CHAPTER I.

LIFE OF MR. JUSTICE BULLER.

Burke and Buller compared. Pedigree of this great Lawyer. Early Industry. Marriage at Seventeen. Talents as Special Pleader; as Advocate. Treatise on the Law of Nisi Prius. Judge at Thirty-two; the youngest in judicial History. Instances of his eminent Ability. Disappointment in not succeeding Lord Mansfield. Trial of Donellan. The Judge libelled as Judge Thumb. His Acuteness and sound Law. Trial of O'Coigly and O'Connor, and his attempted Escape. Buller's Altercation with Erskine. The Judge too severely tasked. Premature Death. Anecdotes and Description of Sir Francis Buller in private Life and in Society. An active Patron of Merit - - - - Pages 1—32

CHAPTER II.

LIFE OF LORD KENYON.

An old-fashioned and righteous Judge, like Sir Leoline Jenkins. Mr. Kenyon's Parentage and early History. Articled to an Attorney at Nantwich. Wrote Poetry. Removed to Brick Court. Intense Industry and Economy. Fellow Student with Dunning and Horne Tooke. Ten Years unsuccessful after his Call. Married at Thirty-nine. Acquired by dogged diligence a large chamber Practice. Counsel for Lord George Gordon. Independent Attorney-General. A bad Courtier. Assailed in the Rolliad. Able Master of the Rolls. Most learned and peremptory Chief Justice. Skirmishes with Clifford and Horne Tooke. Severe to Lawless. An austere Moralist and *Censor Morum*. Punished Libel and Blasphemy with a heavy Hand.

Not choice in his Language, or Latin, but forcible. Emphatic Defender of the Rights of Property. Humane Criminal Judge. Pages 33—86

CHAPTER III.

LIFE OF LORD KENYON CONCLUDED.

Trials of Spence and Williams the Bookseller. Lord Mansfield compared with Lord Kenyon. A perfect Lawyer, bad political Economist. Not partial to Speaking in the House of Lords. A stout Champion of their Privileges. Corresponds with George the Third on the Roman Catholic Question. Grief on his Son's fatal Illness and Death. Anecdotes of his private Life. Religious, moral, parsimonious, the most able of Lawyers, and honest of Men 87—128

CHAPTER IV.

LIFE OF LORD ALVANLEY.

Antiquity of the Family. Arden's Career at College. Friendship with Pitt. Early patronized. Judge in South Wales. Ready Debater. Conflicts in the House. Jests on his personal Plainness. Attorney-General and Chief Justice of Chester. Singular patent Case. Disliked by Lord Thurlow. Sir R. Arden's Equanimity. An excellent Master of the Rolls. Thelluson's Case. Ennobled with only a slender fortune. Chief Justice of the Common Pleas. His Ability as Judge. Close of his Life. Generally beloved. Of a hasty Temper - - - - 129—161

CHAPTER V.

LIFE OF LORD LOUGHBOROUGH.

Fame of an Advocate and Player equally evanescent. Wedderburn's Youth at Edinburgh. Select Society. Poker Club-quarrel with Lockhart. Exchanged the Scottish for English Bar. Taught Elocution by Sheridan and Macklin. Niched into the Rosciad. Little scrupulous in obtaining professional Business. Douglas' Case. Admirable in the House of Commons and versatile. Instances. Connection with Lord Clive. Letters between them. Conforms to Ministers. Lashes Dr. Franklin. Recommends a military Force to disperse the Rioters of 1780. Created Chief Justice of Common Pleas, and tries the Rioters. Judge and opposition Leader. Advises Fox on the Regency Question. Negotiates with Dundas. Lord Chancellor. 162—204

CHAPTER VI.

LIFE OF LORD LOUGHBOROUGH CONCLUDED.

The Chancellor's judicial Oratory and Merits. Case of Myddleton v. Lord Kenyon and Mr. Wrangham. Sir J. Sinclair's Anecdote of the Chancellor's scrupulous Integrity as Judge. Quarrel between the Baronet and Head of the Law. His Failure of Voice in the House of Lords. Intrigues against Pitt, fails, and resigns. Created Earl of Rosslyn with a Pension. His private History, with Strictures of Lord Brougham on his Conduct. His chagrined Retirement at Baylis. Struck with apoplexy. Personal Anecdotes. Mistrusted through Life. A slippery Politician. Eminent, but not truly great. Lord Rosslyn's Treatise on Prisons. Not the Author of Junius. Correspondence with Dr. Lawrence and Lord Nelson. A Patron of Learning. Contrasted with Lord Thurlow. Anecdotes of the Ex-Chancellor in private Life. Munificent and sometimes embarrassed. Of loose Principles in Religion. Summary of his Character.

Pages 205—238

CHAPTER VII.

LIFE OF SIR VICARY GIBBS.

Devonshire the Birth-place of great Lawyers. Instances. Sir Vicary Gibbs born at Exeter; educated at Eton; Craven Scholar at Cambridge. A hard Student in the Temple. Admirable special Pleader. Awkward Recruit in Erskine's Regiment. Called to the Bar in his 38th Year with an established Reputation. Speedy Success. Junior Counsel on the Trials of Hardy and Tooke. Specimen of his Advocacy. Recorder of Bristol. Solicitor-General. Member for University of Cambridge. Not a Favourite in the House. Baffled in cross-examining Mrs. Clarke. His War as Attorney-General with the Press. Filing ex officio Informations. Prosecution of Mr. Cobbett for Libel; of Gale Jones; Mr. Perry; Mr. Leigh Hunt; Editors of the Independent Whig for a Libel on Lord Ellenborough. Duties of the Attorney-General in Prosecuting. Sir Vicary Gibbs' Encounter with Clifford; with Sir Richard Phillipps; with Topping. Anecdotes of Gibbs as Counsel. Destitute of Humour, but a keen Satirist. Trial of Dubost and Beresford. His Replies in the cases of Mr. Sullivan and Col. Wardle. Trial of Bellingham. Sir V. Gibbs considered as Judge. Great Learning and Acumen; marred somewhat by a peevish Temper. His personal Appearance and Character - - - - - 239—298

CHAPTER VIII.

LIFE OF LORD ELLENBOROUGH.

Grandeur of the Law. Mr. Law's Parentage. Anecdotes of Bishop Law. Account of young Law at School and College, by Capel Lofft

and Archdeacon Coxe. University Prizemen. The Tripos Paper—no bad Test of legal Ability. A List of great Lawyers and Judges Senior Wranglers. Letter to Coxe. Resolute in the Drudgery of the Law. Call to the Bar, and early Success on the Northern Circuit. Marriage. Conducts the Defence of Warren Hastings. The Drama and Interludes of the Trial given. Rival to Erskine at Nisi Prius. Cross-examines Sheridan. Interview with Addington. Attorney-General. His Prosecution of Governor Wall. Succeeds Lord Kenyon as Chief Justice. Raised to the Peerage. A forcible Debater in the House of Lords. His indignant Denunciation of the Duke of Athol's Claim. Seat in the Cabinet. Letter to the Bishop of Elphin. Adverse to legislative Reforms in the Criminal Law, Common Law, and Law of Real Property - Pages 299—346

CHAPTER IX.

LIFE OF LORD ELLENBOROUGH CONCLUDED.

Magnanimous Chief Justice. Colonel Despard's Trial. Deportment of Lord Ellenborough to Counsel; to Fielding; Alley; Sir Charles Wetherall; Gaselee; to Defendants; to Witnesses. Trial of Lord Cochrane. Sir William Scott. Mr. Justice Johnson. Examples of Lord Ellenborough's Wit and Sarcasm in and out of Court. Of his Judgments. Severity in Cases of Libels to Mr. Brougham; Mr. Adam. Trial of Sir John Carr. Uncompromising. A Master of masculine Diction. His Diligence and Despatch. Trial of Hone. Letters to Lord Eldon, and from the Prince Regent. Resigns Office, and dies. His Wealth, intellectual Greatness, and Independence. 347—397

CHAPTER X.

LIFE OF LORD ERSKINE.

A complete Life of this Master of forensic Eloquence not yet written. His Lineage. Educated at St. Andrew's; his Letter there. A Midshipman. Letter from the West Indies. Ensign. Marriage. Studies at Minorca. Returns to London. Enters himself at Cambridge and Lincoln's Inn. Meets Captain Baillie. First Speech in his Defence. Defence of Admiral Keppel; Letters between them. Erskine's Defence of Lieutenant Bourne. Appeal for Lord George Gordon. The first Year's Triumphs. Pleads for Mr. Carnan at the Bar of the House; for the Dean of St. Asaph. Obtains a silk Gown. Tribute to his Eloquence by Lord Brougham. Anecdotes of the incomparable Advocate by Espinasse and Dibdin. His Playfulness in Court and at Consultation. Anecdotes of his Dog Toss, and Christie. 398—433

CHAPTER XI.

LIFE OF LORD ERSKINE CONTINUED.

Instances of Erskine's earnest and successful Advocacy; of his Jokes and Puns. Sparring with Mingay, Bearcroft, and Lee. Taunts on Baldwin and Morgan. Altercation with Sir J. Mitford. His comparative Failure in the House of Commons. The first Night. Pitt's Hauteur. Assailed by Burke. Erskine's Admiration for his Assailant. Morbidly Sensitive. Egotistical. Examples of his good-humoured Vanity. Remarks of lady Critics upon the popular Advocate: Hannah More; Miss Seward; Lady Morgan. The Friendship of Dr. Parr; Erskine's Letters to the great Scholar. His *Vers de Société*. Taken Special to the Crown Court. Fierce Onslaught on a Prisoner, and Failure - - - Pages 434—474

THE LIVES

OF

EMINENT JUDGES.

CHAPTER I.

MR. JUSTICE BULLER.

As Burke's name in the Senate, is the name of Buller in Westminster Hall. Few political questions of enduring interest have been discussed during the present century within the walls of St. Stephen's, in which appeals are not repeatedly made to the authority of the sagacious statesman, 'looking both before and after;' his warnings full of prescience, his sayings of comprehensive wisdom, and treasures of judgment and imagination, are lavishly drawn forth by each succeeding speaker, as certain to enforce conviction and conclusive of the debate. A similar respect is paid in our courts to the opinions of the judge. In discussing principles of law, his dicta, his doubts, more weighty than other men's certainties, the inclination of his opinion, though not always assented to, invariably command respect both from the bench and the bar. It is a grateful task, because full of promise for an active and industrious student, to trace the rapid and brilliant course to legal eminence of this able lawyer,—the alumnus and colleague of Lord Mansfield,—destined and worthy to have been his successor, the master spirit though not the chief of his court.

Francis Buller was the second son of James Buller, of Spillington, Esquire, one of the members for Cornwall, by

his second wife Jane, a daughter of Allan, Lord Bathurst, and was born at his father's seat, in 1746. The family, from its antiquity and alliances, had long been eminent among the ancient aristocracy of Devon and Cornwall. Notwithstanding the incredulity of country-gentlemen, some lawyers have pedigrees. The portrait of an ancestor in his judicial robes hung by the bed-side of the room in which he was born, and may have given the first chance impulse to his childish aspirations. He was placed in a private school in the west of England; and then, instead of being removed to the University, was transferred, as a younger son, to an attorney's office. He was determined to make himself thoroughly master of his profession, and, like a good artificer, in the words of Lord Bacon, did not dread "the smoke and tarnish of the furnace." On the 8th of February 1763, he was matriculated at the Inner Temple, and became a pupil of Mr. Ashurst, a celebrated special pleader, with whom he afterwards sat as colleague for many years upon the bench. The advantages to a pupil of a special pleader's chambers depend almost exclusively upon himself. The great majority may be characterized as west-end, or drawing-room, pupils, and pay their hundred guineas, read the newspapers, discuss the topics of the day, copy a stray opinion, transcribe a declaration on a bill of exchange, make up a rubber at billiards, and exeunt. By students of this class was Buller tempted, but had too much firmness to yield to their temptations. In mature life, when in the company of a youth of sixteen, he cautioned him against being led astray by the examples or persuasion of others, and said, looking back with pardonable complacency to his own fortitude, "If I had listened to the advice of some of those who called themselves my friends when I was young, instead of being a judge of the Court of King's Bench, I should have died long ago a prisoner in the King's Bench." In the language of self-gratulating authority, he could repeat to a beginner the classical caution,

> Qui studet optatam cursu contingere metam
> Multa tulit fecitque, puer.

The first to enter, and the last to quit chambers, eager to unravel the mysteries of a subtle science, and delighted with

its logical finesse, he soon proved himself a useful, and of course favourite pupil. At the expiration of two years he took out a certificate as special pleader, and being warmly recommended by his late tutor, he was soon fortunate enough, notwithstanding his extreme youth, to acquire a large practice and many pupils, but was not called to the bar till Easter Term, 1772. Precocious throughout, the future boy judge married, when only seventeen, Susannah, daughter and heiress of Francis Yarde, Esq., of Churston Ferrers, and St. Mary, Ottery, Devon. An only son, Francis, the second baronet, was the fruit of this marriage. The instant success in his profession of the juvenile bridegroom proved that he had not adventured on wedlock rashly. In a work, entitled "Strictures on the Lives of Lawyers," and written by a shrewd observer, it is asserted, that his accession to business was immediate, and his practice as a barrister considerable from the first. In term business he had no equal, and in every motion of consequence or special argument he was always engaged, and at home. Very early in life he seemed to have entered into a recognizance to think and talk of nothing but law, to make himself the Sulpitius or Coke of his age. His astonishing success introduced the custom of making special pleading an introduction to the profession. It had hitherto been the fashion for students to saunter through the courts, and to catch any stray fragment of legal law amid the intervals of gossip; a plan of desultory study still much in vogue with our professional friends on the other side the Channel. "For the talents of an advocate," says Espinasse*, "and legal acquirements, Buller soon ranked among the first of his day. To show the extent of his practice at the bar, it is only necessary to refer to Cowper's Reports, where there will be found few cases of any importance, in which his name does not appear; and his arguments were equally distinguished for research, ingenuity, and sound law." It has been asserted indeed, probably with truth, that he was more successful in his addresses to the bench than to jurors; he was unfortunate in his speeches to the passions, and could not make

* Author of My Cotemporaries, in Fraser's Magazine.

a forcible appeal to the feelings and the heart. However shrewdly he cross-examined, however pertinently he pointed his remarks, with whatever dexterity he managed the details of his case, there was still wanting the happy art, by which a skilful counsel identifies himself with his client, makes others feel by appearing to feel himself, with playful sarcasm laughs a case out of court, or in the storm and tempest of his passion hurries along the twelve honest men in the box, and compels their verdict in his favour. But though Buller could not vie with such a leader at Nisi Prius as Dunning, who played with his audience as on a musical instrument, he was superior to the Wallaces and Lees of his day; and appears, during his short continuance at the bar, to have been retained in all the trials of interest which amused that frivolous age. Among these may be instanced the trial of the Duchess of Kingston, the action for libel against the Rev. J. Horne, the trial of Jack the Painter, the extraordinary case of the Chevalier D'Eon, 'Vir, nunc fœmina, Cæneus,' and trial of Doctor Dodd. It may be mentioned, as a curious proof of the inefficacy of even capital punishments to deter from crime, that the foreman of the jury, who was most eager to convict Mr. Buller's unfortunate client, and to over-rule the more compassionate feelings of his brother jurors, should himself have been tried subsequently before Mr. Justice Buller for forgery, and, meeting with the same rigid justice he had before exacted, have been convicted.

At an early period of his professional life, Mr. Buller gave to the world, in his own name, the first treatise ever published on the law of Nisi Prius; it long continued, as the compiler intended it should be, a favourite vade mecum on circuit; and, being published at a time when good treatises were rare, could not fail to enhance highly the legal reputation of the author. Though without much pretension to literary elegance and style, definitions are there given with clear, logical precision; decisions are noted down with accurate brevity, and an exact method assists, while it never perplexes the learner. It was not affected to be denied, that the work had been compiled from a collection of cases made by Mr. Justice (afterwards Lord) Bathurst,

for his own use, and that he had given the manuscript to his kinsman to assist him in his studies. They, however, who remember the jejune and feeble talents of Lord Bathurst, may well believe that the treatise when it passed from his hand was a mere shell or skeleton; that it required Buller's plastic and vigorous arm to endue it with sinews, and flesh, and muscle. The jealous rivals, indeed, whom he had outstripped in his profession, affected to represent the publication as a disingenuous attempt to raise a spurious fame, by assuming the title of author of a book which was the work of another. Mr. Buller never condescended to notice the calumny, which was, in the pithy language of Lord Mansfield, too impotent to be contradicted. From the first, the talents of the young lawyer had attracted the notice of the venerable judge; he had admired his perspicuous and inductive reasoning, his clear method, that perfection of forensic oratory which says no more than just the thing it ought, his copious reading, and the nice acumen with which he could distinguish between apparently conflicting decisions, and search out the true principles of the law. His argument for the plaintiff in error, in the important case of Fabrigas v. Mostyn, delivered the year after his call to the bar, elicited the hearty applause of Lord Mansfield, who said, emphatically,—and praise had a double charm coming from his lips,—"It has been extremely well argued." The father of the King's Bench was aware that his health and strength would be shortly on the wane, and anxiously sought a colleague on whom he could rely as another self, to whose more youthful vigour he might delegate a portion of his duties when they should become onerous, and on whose judgment he might lean with confidence in all cases of difficulty and doubt. Accordingly, on the death of Sir Richard Aston, which occurred in Hilary Term 1778, Lord Mansfield strongly recommended Mr. Buller as his successor, and the Chancellor lost no time in offering the vacant judgeship to a young man, then only thirty-two years of age,—an instance, we believe, without parallel in the modern judicial annals of our country. His appointment formed an excellent contrast to the too prevalent custom of selecting for judges aged lawyers, whose duties had

been done, at a time of life when they were only fitted for retreat; a precedent which the Chancellor Eldon might well have followed, instead of lifting up such decayed veterans of seventy, as Mr. Justice Burroughs and Chief Baron Alexander, to the Bench. In a pecuniary point of view the offer presented no attraction, the income of a puisné judge of the King's Bench being then only two thousand two hundred a year, a sum scarcely the fourth of what a counsel in leading practice might expect to realize. Mr. Buller had already received a silk gown, had been appointed second judge on the Chester circuit, and stood at the vestibule of all the public offices leading to distinction. But the proposal comprehended still a great charm to an ambitious and weary man; his constitution, naturally weak, had threatened to give way under those hard task-masters, the daily toils of his profession; and he sighed for the comparative repose of the bench. His hopes, too, were flattered with the promise, that his illustrious patron would, on retiring, exert all his influence in his favour; and that, being associated with him a few years, on his shoulders might descend the mantle which had been worn by the legal seer.

After a coy delay, on the 6th of May 1778 he took his seat as junior judge, on the side cushions of the King's Bench. "If any one were arrogant enough at the time," writes Mr. East, in his Introduction to the Pleas of the Crown, "to question the judgment of Lord Mansfield upon that occasion, the very active part which Mr. Justice Buller sustained, in the administration of justice, for more than seventeen years, during which time he sat in the Court of King's Bench, as well as the share which declining health permitted him to take in public business, during the six years he was a judge at the Court of Common Pleas, would most decidedly prove the discernment of that noble and enlightened magistrate, who left the public to regret, as little as possible, the infirmities which prevented the continued exertion of his own splendid talents; when to the abilities of the other judges of his court, he added the industry, sagacity, quickness, and intelligence, for which his protégé was most eminent. And perhaps the wisdom of Lord

Mansfield's recommendation cannot be more strongly evinced than by recollecting, that the whole business of the sittings in Westminster and London, during the last two or three years of his being chief justice, was conducted solely before Mr. Justice Buller, in the course of which many great and important questions, extensively affecting the real and commercial interests of this country, were determined by him, with a promptitude and justness of decision, which would alone place him very high in rank among those judges, whom this country has been used to regard with admiration and reverence." To this high praise we may add the tributes of two other learned contemporaries. "His speeches from the bench," we are assured,* "approached as near perfection as modern example reaches: they were models for imitation. He possessed the greatest quickness of apprehension, saw the consequences of a fact, and the drift of an argument at its first opening, and could immediately reply to an unforeseen objection; his perception was almost too quick, it sometimes exposed him to the charge of impatience and petulance. The animation with which he spoke was imposing and impressive, and the earnestness of his delivery commanded alike attention and conviction. From the distinctness of his voice not a word was lost, and this gave effect to his language, which was clear and correct, but without any affectation of ornament or classical allusion. His summings up of evidence to jurors were master-pieces of conciseness and perspicuity. Mr. Justice Buller possessed, to a degree that I never saw equalled in any other judge, the distinguishing gift of seeing at a glance the point on which every case before him turned; he stripped it at once of all circumstances which did not go to the merits, and to these alone he kept the evidence strictly confined. By such means the cause paper was got through at the end of every sitting; and the suitors of the court were relieved from the anxiety of suspense, the torment of remanets, and the impoverishing punishment of refreshing fees. Precipitancy of decision was imputed to him as a fault, but it was the decision arising from talent, which saw at one view

* Strictures on Eminent Judges.

the bearing of the facts on the doubtful points of the case, and the principles of law to which the attention should only have been directed." It was no rare feat for Mr Justice Buller, sitting at Guildhall, a worthy representative of the venerable chief in his most vigorous days, to clear a paper of twenty-six causes in one long day. "Velocity in horsemanship," said the bilious Bentham, "saw itself rivalled by velocity in judicature! Wholly without fear, prompt, vigilant, self-relying, he lost not a moment in perplexity or doubt, seeming, when he sat in the Court of Chancery, of Chief Justice Dr. Grey's opinion, who never liked equity so well as when it was like law, and in the Queen's Bench concurring with Lord Mansfield, who never liked law so well as when it was like equity. His decrees were pronounced with an alacrity and dauntlessness almost as decided as the judgments that were dashed off at Nisi Prius, and extorted from Lord Eldon a gentle rebuke." Speaking with all the veneration and respect due to so great a judicial character, the point in which it seems to have failed is, that he thought too confidently that he understood all the doctrine of a court of equity. The beginning of the year 1788 saw Buller at the summit of his professional eminence, on the point of grasping, in the general expectation of the profession, that power in name of which he had long possessed the reality. While Mr. Justice Ashurst presided in the King's Bench, Judge Buller had in effect been the chief justice, in every respect but in possession of the title. The patronage which belonged to the office, it was understood, Lord Mansfield had wholly resigned to him during his retirement. His regulations and rules of court were uniformly sanctioned by him, and his recommendations to office invariably attended to. In disposing of the business of the court he was absolute. The passive indolence and inertness of Ashurst left him without control, and Judge Grose had too recently come from the Common Pleas, and was too little acquainted with the practice of the King's Bench, to presume to interfere. His assumption over his senior was noticed by the bar, and one of them having remarked to Cowper, the King's counsel, how Buller trespassed on the province of Ashurst: "Pooh!"

said Cowper, "that's nothing; don't you see," pointing to the senior's rubicund face, "how he himself gives *colour to the trespass.*" Our readers, who are not professional, must be willing to believe that the jest was a good one, for we dare not hazard in their behalf that most forlorn of all Quixotic undertakings, the attempting to explain a joke. Not only over the chief Court of Common Law, but over the Court of Chancery also, was Judge Buller at this time repeatedly called upon to preside. Lord Thurlow, in his frequent absences through illness or affairs of state, placed more reliance on Buller than on any other substitute; and, on resuming his seat, would highly eulogize the decrees of one "whom he, in common with all the world, felt bound to respect and admire." When the affair of stealing the diamond necklace of the unhappy Queen of France was in agitation, a person observed to Lord Thurlow, "that long and repeated examinations of the parties in France had cleared up nothing." "True," said his Lordship, "but Buller, Garrow, and a Middlesex jury would, if such a matter had been brought before them, have made it all in half an hour as clear as daylight."*

In the summer Lord Mansfield resigned, and 'a change came o'er the spirit of his dream.' The wishes of the venerable peer, to secure which he had exerted all those arts of diplomacy for which he had in earlier life been so famous, —the general hopes of the profession, who contrasted the courteous bearing of Buller with the rough deportment of his rival,—his own high claim, from having performed unfeed so long and so ably the arduous duties of the office,—were all alike disregarded. The prime minister, Mr. Pitt, was one who scarcely ever rewarded any but political services; and even in his judicial appointments had respect to previous merits in Saint Stephen's Chapel. To Buller, except in the remembrance of a few courtesies which that learned judge had shown him on his first Western circuit, he was almost wholly unknown; but Sir Lloyd Kenyon, an honest and admirable lawyer, had served him faithfully through several

* Law Review.

political campaigns, and had fought his battles, in advocating the Westminster scrutiny, one of the most unwise and unpopular acts, during his long administration. Another and more weighty reason for Mr. Pitt's refusal has been ascribed to the impropriety, of which himself had been an eye-witness on the Western circuit, of Mr. Justice Buller trying a Quo warranto affecting political rights in a close borough, of which his own family had notoriously the property. In the repugnance produced by this unguarded and improper act Lord Thurlow shared, saying, in his own rough disparaging way, "I hesitated long between the corruption of Buller and the intemperance of Kenyon." In fact Mr. Pitt, with characteristic hauteur, controlled the choice of the Chancellor; and, notwithstanding his curses, muttered loud and deep, insisted on bestowing the second vacant prize, the Mastership of the Rolls, on another staunch political friend, Sir Pepper Arden. The sole reward which Buller got for his valuable labours was the promise of a baronetcy, to which rank he was elevated in the following year. That he felt the disappointment keenly could have afforded no surprise; it was not confined to himself—a general feeling of regret was excited among the whole of the King's Bench bar, in whose estimation he stood so very high, not merely for the extent of his legal knowledge, but for his conduct towards them on the bench, and for his general urbanity as a judge. They had no flattering anticipation of courtesy from Lord Kenyon, such as they had been in the habit of receiving from Mr. Justice Buller, and they found their apprehensions not without foundation. Disappointment, however, did not induce the learned judge to resign, or immediately to change his seat to another court. "He resumed his place in the King's Bench, but with evident chagrin and dissatisfaction, which the temper and manners of the new chief justice were but little calculated to remove, or to reconcile him to that change of situation which his appointment had occasioned. Too able a lawyer to require the assistance of others to enable him to form an opinion, and too proud to ask it, Lord Kenyon rarely condescended to consult the other judges, or inquire their judg-

ment. He did not wait for their expression of approval or dissent, but made rules absolute or discharged them on his own discretion only."* On arguments he pronounced an unhesitating opinion, and left the other judges to agree with him, or differ from him, as they thought fit; the latter was of unusual occurrence, though Mr. Justice Buller sometimes astonished the surly chief, by explicitly dissenting and assigning very cogent reasons for his dissent. A similar slight was noticed with shrill displeasure by Mr. Justice Willes in Lord Mansfield's time, but judicial fame did not attach to his interruption the same weight as that which attended the grave rebuke of Buller and his dignified expression of a contrary opinion. "'I have not been consulted, and I will be heard!' exclaimed one of Lord Mansfield's puisnés once. At this distance of time," continues Jeremy Bentham, "five-and-thirty or forty years, the feminine scream issuing out of a manly frame still tingles in my ears."

To descend to the low and level consequence of his brethren, who had been used to look up to him, was ill suited to the high mind of Buller; he had been the president of a liberal republic, he was now the vassal of an absolute monarchy. His opinions had swayed implicitly the judicial minds of his brethren; they were now exposed to the angry bay of Kenyon, and the snappish yelp of Grose. He bore the change for many years and till enfeebled by disease, when, forsaking the court in which he had practised all his youth and manhood, he retired from the King's Bench into the Court of Common Pleas, and became a puisné judge of that court in 1794.

Mr. Cradock, in his lively memoirs, gives an interesting account of an interview with Judge Buller, shortly after his disappointment, when his health and spirits were declining. "This judge," he says, "had great quickness of intellect, and strict integrity, but was not always so guarded, either in his charges or opinions, as might have been wished. He was affable, friendly, temperate at the table, but unhappy, and

* Espinasse.

had resort too frequently to whist to divert him from uneasy thoughts. This seeming attachment to cards rendered him liable to censure, especially on the circuit. One of the last times I ever met him at dinner was on the day of his coming to Leicester, at the house of an eminent physician there. His lordship took leave of the company about twelve o'clock, but lingering for awhile he returned to the table, and we played whist for several hours. At the assizes, on the Sunday, we all dined in the Nework's, Leicester; there were present Judge Buller, Counsellor Newman, and some gentlemen, who were all to meet again next week at Warwick; the general conversation was Donellan, and his guilt was asserted by all; the only doubt seemed to be, that as Lady Boughton, the mother, was all but a fool, her evidence, which was necessary, might not be effective; but it was acknowledged that she had been privately examined at the judge's chambers in town, and they thought she might be produced. I am sorry to say it, that Judge Buller's charge at Warwick was imprudent, for it prejudged, or rather condemned, Donellan." The circumstances of this extraordinary trial, which excited intense interest at the time, and was made matter of grave and serious imputation upon the presiding judge, are implicated too closely with his character as a criminal lawyer not to require more than a passing notice.

Captain Donellan had married the only daughter of Lady Boughton, a widow, whose son, Sir Theodosius Boughton, was then about twenty, and would, on attaining his majority, succeed to a fortune of above two thousand a year. The families lived together at Lady Boughton's seat in Warwickshire. The young baronet, who had led a somewhat irregular life, became slightly indisposed, and his mother administered to him, as she thought, one of those innocent draughts which apothecaries are apt to furnish on such occasions. Before giving it she perceived that the smell was very extraordinary, exceedingly bitter, and very like the smell of laurel water when it was afterwards shown to her. The unfortunate young man took the draught, and on Lady Boughton returning to the room, in about ten minutes, he

was found with his eyes fixed, and hands clenched, foaming at the mouth, and apparently in the agonies of death. He expired before any medical aid could be procured. Captain Donellan wrote shortly afterwards to his guardian, to mention that the young man had died of fits, and to inquire whether there should be a post-mortem examination. The guardian replied that it ought certainly to take place, for the satisfaction of the survivors, without delay. Various delays were, however, allowed to interpose; and when the medical men at last met, the majority were of opinion that the body was not in a fit state to be dissected. Captain Donellan suppressed this fact when he wrote again, but said the physicians had come, and all was done as wished. Accordingly full permission was given for the funeral, and the body of the deceased baronet was interred on the eighth day after his death. But the suspicions of the neighbourhood were roused; rumours of poison daily gained strength and consistency; the coroner for the district issued his warrant, and the body was exhumed. A partial dissection took place, but the head was not opened, nor were those chemical tests applied to the contents of the stomach, by which the presence of mineral or vegetable poison is now so commonly detected. When Lady Boughton was examined at the inquest, she deposed to her son-in-law having washed the phials in which the draughts were contained, in spite of every opposition she could give, on which Captain Donellan was observed to lay hold of her by the sleeve, as if attempting to check her from giving that fact in evidence. The coroner and jury sat three days; on the last day Donellan, becoming alarmed, wrote to them a letter, stating in effect that he felt it his duty to give them every information he could; that the deceased used to have arsenic by the pound weight at a time, to kill rats, with which the place abounded; that at table they had not eaten knowingly, for many months past, any thing which they perceived him touch, as they well knew his extreme inattention to the bad effects of the numerous things he frequently used to send for. The scope of the letter was to lead the jury to believe that the young man had inadvertently poisoned himself; but its statements were wholly untrue. The inquest returned a

verdict of wilful murder against the writer; and on his trial before Mr. Justice Buller other facts, still more pregnant with guilt, were elicited.

It appeared, that in a conversation with a fellow-prisoner, who asked him if he believed that Sir Theodosius was in truth poisoned, he replied, "I make no doubt of it." Lady Boughton and the apothecary being mentioned as instruments, he said, "I don't know which of them, but it is amongst them." He afterwards wrote a letter, and desired it to be sent unsealed, as it was, to Mrs. Donellan. "No longer remain where you are likely to undergo the fate of those who have gone by sudden means, which Providence will bring to light by and by. In my first letter to you from Rugby, in November last, I mentioned to you a removal; I had my reasons, which will appear in an honest light in March next, to the eternal confusion of an unnatural being." As another proof of the self-contradictions of a guilty man, it was deposed that at the time the body was opened Donellan said, there was nothing the matter, that a blood-vessel had broken. But the main fact of suspicion, which weighed so heavily on the mind of the learned counsel, Mr. Howorth, who was brought down special to conduct the prosecution, that he exclaimed on hearing it, "Now I have the rope round his neck which will hang him," was, that he had for some months used a private still; and that he had distilled the juices of many plants and shrubs, laurel amongst the rest. After the still, which had been recently used, was discovered on the premises, Donellan was so bad a chemist that, on being asked for what purpose he had procured this machine, he replied that he had used it to make lime-water to kill the fleas, not knowing that lime-water can only be made by saturating water with lime, and that a still never was, and never can be, applied to such a purpose. But in his library there happened to be a single number of the Philosophical Transactions, and of this single number the leaves had been cut only in one place, and this place happened to contain an account of the mode of making laurel water by distillation. What more easy than for the prisoner secretly to have filled a phial with laurel water, and to have substituted it for the

real draught in the sick room. On the day of the death he had this private still completely rinsed and purified; five or six medical men deposed, that, to the best of their judgments, a draught of laurel water had been the cause of death; but their science was found lamentably defective on cross-examination, and their knowledge of poisons to be very slight indeed. Against such a mass of inferential evidence, what course could the counsel for the prisoner pursue? If poison had indeed been given, who could be the poisoner but the shuffling, equivocating, self-contradicted, self-condemned prisoner at the bar?

Mr. Newman, with great discretion, founded his defence on the fact that the death was not occasioned by poison, and in support of his position put into the box Mr. John Hunter, the most celebrated anatomist of the day. His examination was most important; the whole appearances, he said, on the dissection, explained nothing but putrefaction.

"Q. Are the symptoms that appeared after the medicine was given such as necessarily conclude that the person had taken poison?

A. Certainly not.

Q. If an apoplexy had come on, would not the symptoms have been nearly, or somewhat similar?

A. Very much the same.

Q. Have you ever known or heard of a young subject dying of an apoplectic or epileptic fit?

A. Certainly; but with regard to apoplexy not so frequent. Young subjects will perhaps die more frequently of epilepsies than old ones; children are dying every day from teething, which is a species of epilepsy arising from irritation.

Q. Did you ever in your practice know an instance of laurel water being given to a human subject?

A. No, never.

Q. Is any certain analogy to be drawn from the effects of any given species of poison on an animal of the brute creation to that it may have on a human subject?

A. As far as my experience goes, which is not a very confined one, because I have poisoned some thousands of animals,

they are very nearly the same. Opium, for instance, will poison a dog, very nearly similar to a man. Arsenic will have very nearly the same effect on a dog as it would have, I take for granted, on a man.

Q. Have you ever had an opportunity of seeing such appearances on such subjects?

A. Hundreds of times.

Q. Should you consider yourself bound by such an appearance to impute the death of the subject to poison?

A. No, certainly not. I should rather suspect an apoplexy; and I wish in this case the head had been opened to remove all doubts.

Q. Then, in your judgment, on the appearances the gentlemen have described, no inference can be drawn from thence that Sir Theodosius Boughton died from poison?

A. Certainly not; it does not give the least suspicion."

The Court here interposed.

"Q. Give me your opinion in the best manner you can, one way or the other, whether, upon the whole of the symptoms described, the death proceeded from that medicine, or any other cause?

A. I do not mean to equivocate; but when I tell the sentiments of my own mind, what I felt at the time, I can give nothing decisive."

Mr. Justice Buller, in summing up, showed how little his own mind was affected with doubt. "A presumption," he said, "which necessarily arises from circumstances is very often more convincing, and more satisfactory, than any other kind of evidence, because it is not within the reach and compass of human abilities to invent a train of circumstances, which shall be so connected together as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of those circumstances. For the prisoner, you have had one gentleman called, who is likewise of the faculty, and a very able man; I can hardly say what his opinion is, for he does not seem to have formed any opinion at all on the matter. He at first said he could not form an opinion whether the death was or was not occasioned by the poison, because he could conceive that it might be ascribed to other causes. I

wished very much to have got a direct answer from Mr. Hunter, if I could. What, upon the whole, was the result of his attention and application to the subject?—what was his present opinion? But he says he can say nothing decisive. So that on this point, if you are to determine on the evidence of the gentlemen who are skilled in the faculty alone, you have the very positive opinion of four or five medical gentlemen that the deceased did die of poison; on the other side, you have what I really cannot bring myself to call more than the doubt of another; for it is agreed by Mr. Hunter that the laurel water could produce the symptoms which are described. He says an apoplexy or epilepsy would produce the same symptoms; but as to an apoplexy it is not likely to attack so young and so thin a man as Sir Theodosius was; and as to an epilepsy, the other witnesses tell you they don't think the symptoms, which have been spoken of, show that he had any epilepsy at the time."

The jury retired to consider their verdict, but their minds were as entirely made up as that of the judge; and in nine minutes they returned with a verdict of guilty. Mr. Justice Buller proceeded immediately to pass sentence of death upon the prisoner.

"John Donellan, the offence of which you now stand convicted, next to those which immediately affect the state, the government, and the constitution of the country, is of the blackest dye that man can commit. For of all felonies murder is the most horrible, and of all murders poison is the most detestable. Poisoning is a secret act, against which there are no means of preserving or defending a man's life; and, as far as there can be different degrees in crimes of the same nature, yours surpasses all that have ever gone before it. The manner and the place in which this dark deed was transacted, and the person on whom it was committed, much enhance your guilt. It was committed in a place where suspicion at the instant must have slept, where you had access as a bosom friend and brother, where you saw the rising representatative of an ancient family reside in affluence, but where your ambition led you, proudly but vainly, to imagine that you

might live in splendour and in happiness, if he, whom you thought your only obstacle, were removed. Probably the greatness of his fortune caused the greatness of your offence; and I am fully satisfied, on the evidence given against you, that avarice was your motive, and hypocrisy afforded you the means of committing this offence. That the deed was done by you, which not only hastened him, but must very soon hurry you to an untimely grave, has been fully proved to the satisfaction of myself and the jury; and I think it impossible to find any, even of the meanest capacity, among the numerous auditory now standing around you, that can doubt about your guilt."

The prisoner was executed on the Monday following, denying his guilt. We may totally dissent from the opinion of those who believe in his innocence, and accuse Mr. Justice Buller as the shedder of innocent blood; we may feel assured that there never was a case brought into a court of justice in which so many circumstantial facts were elicited, all tending to an irresistible conclusion of guilt; and yet be by no means surprised at the sympathy which the fate of even this atrocious criminal excited. Englishmen love fair play, and their honest prejudices were aroused, on learning that the chief witness for the prosecution had been privately examined; that a sort of private rehearsal had taken place; that an eminent counsel was to be brought down special to ensure a conviction; and that the judge openly avowed his certainty of the prisoner's guilt. They believed that a reasonable chance of escape was not afforded to the culprit; that the humane wish, God send you a good deliverance, was with held from him; and their sympathies, however abhorrent of his crime, closed freely around the doomed criminal. The severe lines of Savage upon a really merciless judge, Mr. Justice Page, no less inferior to Buller, as a lawyer, than as a gentleman or man of humanity, were applied to his conduct.

> "But how scape pris'ners? To their trial chain'd,
> All, all shall stand condemn'd who stand arraign'd.
> Dire guilt, which else would detestation cause,
> Prejudg'd with insult, wondrous pity draws;
> But scapes ev'n innocence his harsh harangue?
> Alas! ev'n innocence itself must hang."

The medical question is fought *cum odio plusquam theologico* even to the present day.*

The circumstances of this trial tended to confirm the general impression of Buller's rigorous severity, which two rash sayings of his had previously created. The first of these dicta was, that previous good character went rather in aggravation than in mitigation of punishment, for the longer a prisoner might have lived in the good estimation of his neighbours, the more guilt was there in his losing it. A paradox certainly very alien from the mild spirit of a Christian judge. The other unguarded saying, which escaped from him unpremeditatedly, excited general animadversion, namely, that a husband had a right to chastise his wife with a stick no thicker than his thumb. The subject offered too fair an opportunity to the caricaturists not to be eagerly grasped at. His portrait as Judge Thumb speedily adorned the print shops, and the women enjoyed a hearty laugh at the expense of this ungallant champion of club law. A similar ungallant doctrine had been mooted in the preceding century by a Dr. Marmaduke Coghill, judge of the Prerogative Court for Ireland, and with still more detriment to himself. Having been called upon to decide the grounds of a divorce sued for by a wife against her husband, who had given her a good beating, the venerable civilian delivered a solemn opinion that with such a switch as the one he held in his hand, moderate chastisement was within the husband's matrimonial privilege. This legal maxim occasioned so much offence or alarm to a lady to whom the Doctor had been for some time paying his addresses with a fair prospect of success, that she peremptorily dismissed the assertor of so ungallant a doctrine. Dr. Coghill, as may be guessed from his opinions, died unmarried.† "The civil law," says the more courtly Blackstone‡, allowed the husband, for some misdemeanors, *flagellis et fustibus acriter verberare uxorem*, with whips and clubs sharply to strike a wife; but with us, in the politer reign of Charles the Second, this power of correction began to be doubted," and may be now positively denied. The sly remark of the commentator is still too true,

* See the Law Magazine, vol. ii. p. 19.

† W. Scott's edition of Swift.

‡ Blackstone's Commentaries, vol. i.

that the lower rank of people, who were always fond of the old common law, claim and exert their ancient privilege.

While the light shafts of satire glanced innocently by, a more ponderous missile was hurled at the Judge's unforgiving temper by the redoubtable hands of Dr. Parr. That humane pedant having rushed with horror from the butcher's shambles at Warwick, as he termed the courts of justice there, hastened to launch the following diatribe; and however difficult to recognize the portraits, classical curiosities they certainly are. "With learning, taste, and genius, that adorned the head, but improved not the heart, one of them was a sober, subtle, inexorable interpreter and enforcer of sanguinary statutes. With a ready memory, keen penetration, barren fancy, vulgar manners, and infuriate passions, the other carried about him an air sometimes of wanton dispatch, and sometimes of savage exultation, when he immolated hecatombs at the altar of public justice. Armed with giant strength, and accustomed to use it like a giant, these protectors of our laws transferred to acts of thievery that severity which the courts of Areopagus employed only against cut-throats. If an altar of Pity, like that of Athens, had been placed in the avenue to our English courts, the steps of Cynopes would not have been turned aside to the right or to the left. His eye would have darted on the emblems of the altar with a glare of fierce disdain; he would negligently have swept the base of it with the skirts of his robe. My hope is, that the mercy which they showed not to others in this world may, in another world, be shown to them."*

Circumstances delayed the publication of this extraordinary morceau till after the death of Cynopes, as Buller is there termed; had he seen it in his lifetime, we are satisfied, so placable was his nature, that he would have been the first to shake hands with Doctor Parr, and assure him, that the monster he had drawn was one entirely of his own invention. The rigour with which he awarded the punishment of death must be imputed to the age, and not to the individual. He appears to have been less severe than several of his colleagues,—Mr. Justice Heath, for instance, who,

* Dr. Parr's Works, vol. iv.

several years after, left a man of infamous character for execution, under a particular statute, for cutting down a grove of sixty or seventy young trees. Death appears to have been the dread penalty for offences against property, and the calendar of larceny to have been marked with characters of blood. Our age is better than the last in some particulars; in none more than in the spirit of humanity which it has infused into the criminal code. We think and speak of executions in a manner and spirit totally different from our fathers; and our complaint against the judges of the last age is, that they did not, by a merciful administration of harsh statutes, anticipate the coming generation. The popular notion of his severity was brought home to the Judge in an amusing manner. Early one morning Sir Francis Buller had gone wrapt up in a great coat to a horse dealer's, to bargain for a horse he had fancied. It was trotted out, and went tenderly on the off foot, a defect, as jockeys well know, best detected at first starting. The keen judge called out to the dealer to come back, the animal would not do. "Why you are as bad as old Buller," retorted the jockey gruffly, "you condemn him before trying him." But however inexorable after verdict, Mr. Justice Buller held the scales of justice equal between the crown and the prisoner during the trial. It used to be said of him, by those who, from their situation in life, were most likely to form a true judgment of that part of his character, that no person, if guilty, would choose to be tried by him, but that every one, if innocent, would prefer him for his judge; than which, surely, no language can describe more emphatically the general opinion of his great discernment and impartiality. Leach's Crown Law abounds with testimonies of his acuteness and discretion. On one occasion a man was tried before him for a capital offence; the witness for the prosecution deposed strongly against the prisoner, and as the case was going on a grand juror threw down a note to his counsel, stating that the witness had sworn quite the reverse before the grand jury that morning. The statement was immediately made known to the court, and Judge Buller ruled, contrary to precedent, that the grand juror should be allowed

to appear as a witness. He did appear; the prisoner was acquitted, and the witness was afterwards convicted of perjury. The novelty of a case never startled a judge who could at once apply to it sound principles of law. In 1788 he tried, at Chester, Count Villaneuve for a false pretence. The count had applied to Sir Thomas Broughton, telling him that he was entrusted by the Duke de Langun to take some horses from Ireland to London, and that he had been detained so long by contrary winds that his money was spent. Sir T. Broughton was induced by this representation to advance some money to him; and afterwards it turned out that the prisoner never had been employed by the Duke de Langun, and his whole story was a fiction. On that case the prisoner was convicted, and sentenced to hard labour on the Thames. With characteristic good sense, Sir F. Buller was the earliest to explode the test, that whenever the lungs float in water the child must have been born alive; a delusive theory, by which it is to be feared several lives have been sacrificed. He was the first, where several offences appeared to be charged on the face of an indictment, to put the prosecutor to make his election on which charge he would proceed. At Exeter, where two prisoners were indicted for murder, and evidence given which pressed very hard on one prisoner, but was not admissible against the other, the judge thought it, as undoubtedly it was, the soundest way of administering justice to sum up the evidence, and take the verdict against each separately. In one instance only do we remember the captious spirit of the special pleader obtaining a victory over the more expanded wisdom of the judge. It was in an indictment, laying the property in James Hamilton, commonly called Earl of Clanbrassil, whereas in truth and in fact he was earl by right and not by courtesy; the judge feared that the words "commonly called" were not mere surplusage, but would vitiate the indictment. His fears, however, were not responded to by the other judges. As a constitutional lawyer Mr. Justice Buller was thought to lean too strongly to the prerogative; but if ever justly liable to the reproach it must be confessed that he effaced it during the state trials, which darkened the latter period of his judicial life. Ill

health prevented him from attending more than a small portion of Hardy's trial, but his exposition of what he deemed the law and constitution betrayed no signs of weakness, and was most sound.

In 1798 Mr. Justice Buller was appointed the head of a special commission at Maidstone for the trial of O'Coigley, O'Connor, and others, accused of high treason. His deportment during these trials, rendered remarkable by some extraordinary incidents, elicited the admiration of all parties. We do not notice the higher qualities of the judicial mind, for these he had always at command. The prisoners had been detected in clandestinely attempting to embark for France and on the person of one of them was found a document full of treasonable matter. Sir Francis Buller delivered a charge, replete with practical sense and information. "Among the unthinking," he said, "and those who do not take a comprehensive view of the subject, much mischief may be done by artful and designing men, who aggravate the defects of one constitution, and dwell only on the advantages of others; and, notwithstanding the imperfections of human wisdom, require unerring conduct from their governors; imputing every mischief of chance to ill design and corruption, and as a correction of all these evils, they teach the people that the government are to be in their hands. They whom this latter argument may allure would do well to consider, whether any change of government can really better the condition of the body of the people. The actual exercise of power must, from its nature, be vested in a few; it may shift, where there is no monarchy, from the hands of one contending party to those of another, but the mass of the people must remain where they are,—employed at the anvil, the loom, and the plough, or in some occupation which will afford a maintenance and support. There is nothing which prevents men of abilities, equal to great situations, from attaining in this country the highest situation and honours, of which the instances are numerous in every department. But as no state can gratify the views and ambition of every one, who may feel his fortune wearing away, may think his merit neglected, or his abilities em-

ployed on subjects below them, men of this description will look to times of trouble and confusion, as affording them opportunities, which in the regular course of settled government cannot arise, when they may obtain in a day what no length of labour could have procured, without the assistance of chance; when they may rise to sudden elevation by the downfall of others; and when, from the general misery of their country, they may, by possibility, advance their own private interest. To guard against the machinations of such restless and turbulent spirits, the common law, and the statute law of the land, have made several provisions, at the head of which the code of criminal law relating to high treason is to be placed." The learned judge then proceeded to explain the law in his wonted clear manner. A most strange incident took place previous to the impannelling of the common jury. A clergyman, who deserves to be gibbeted to infamy, by name the Reverend Arthur Young, was complained of to the judge, as having attempted to practise with the persons who were summoned to constitute a jury. A letter of his, which was read in open court by Mr. Plumer, proved, that, in the fury of his politics, he had forgotten the very elements of his Christian profession. "I dined with three of the jurymen of the Blackburn hundred, who have been summoned to Maidstone to the trial of O'Connor and Co., wealthy yeomen, partizans of the high court party. I exerted all my eloquence to convince them how absolutely necessary it is at the present moment, for the security of the realm, that the felons should swing. I represented to them that the acquittal of Hardy and Co. laid the foundation of the present conspiracy, &c. I urged them to hang them through mercy; although the judge is sufficiently stern, and seldom acquits when hanging is necessary, the only fear I have is, that when the jury is impannelled, Blues may gain the ascendancy. The three men are thoroughly sensible that they would lose every shilling by acquitting these felons."

Mr. Justice Buller heard this letter read with the indignation natural to an honest man, and exclaimed, in tones of the deepest resentment, "This clergyman ought to be punished,

and very heavily." His name was repeatedly called, but he prudently kept himself beyond the jurisdiction of the court. The result of the trial was very different from what his sanguinary temper had conspired to make it. After a very humane summing up, all the prisoners were acquitted, with the exception of the Roman Catholic priest, O'Coigley, of whose guilt there could be no doubt. It was now late at night, and Judge Buller proceeded to pass sentence of death upon the prisoner. At the close of his emphatic sentence a scene occurred without precedent in a court of justice.

The hall was crowded to excess, partly with the friends of Mr. O'Connor, who had come down in crowds from London to bear witness to his character, including the leaders of opposition, Grey, Tierney, Sheridan, Erskine, and others; and partly by the officers of justice, who had mustered in large force, from apprehension of a rescue. Judge Buller directed the gaoler to remove the rest of the prisoners; but O'Connor's friends exclaimed that he was acquitted, and must be discharged. At this moment of confusion he leapt out of the dock, and a violent conflict immediately ensued, between those favouring and those opposing his escape. The lights in the immediate neighbourhood were extinguished, weapons were drawn, and blows struck; and so great was the excitement that one of the counsel for the prisoner took part in the affray. The clerk of assize jumped on the table, and drawing a sword flourished it before the judges, who hastened to remove the weapon in safety from the hands of their trembling champion. The judges remained standing on the bench during the whole of this extraordinary riot, conscious that their presence must impose some awe, and might possibly prevent bloodshed. O'Connor effected his escape to the street, but was there retaken, being knocked down by Mr. Justice Buller's coachman, and brought back to his former station; and, after a short interval, the firmness and dignified composure of the judges succeeded in restoring order. Earl Thanet and Mr. Ferguson, the barrister, were afterwards convicted of participating in this disgraceful riot,

and sentenced to different terms of imprisonment and fines.

It has been made matter of reproach to the learned judge, that he did not always display like presence of mind, and that he sometimes, in a moment of petulance, compromised his station. His celebrated altercation with Mr. Erskine has been adduced as a proof of this, when, on the trial of the Dean of St. Asaph, at Shrewsbury, that fearless counsel persisted pertinaciously, but not more than his duty to his client demanded, in asking the jury to explain their verdict. The judge interposed with warmth, "Sit down, Mr. Erskine, know your duty, or I shall be obliged to make you know it in some other way." The advocate rejoined with equal warmth, "I know my duty as well as your lordship knows your duty; I stand here as the advocate of a fellow-citizen, and I will not sit down." The judge was silent, and must have felt it some derogation to his dignity, to have uttered threats which, in his cooler moments, he did not design to carry into execution.

This altercation stands out in strong relief as one of the few instances, in modern courts of justice, of a public and extreme collision between the advocate and judge. Not so with our volatile countrymen across the Channel, who delight in a scene, and excuse the impropriety for the sake of the point and wit and fun. Thus we read of a sharp sparring match between Judge Robinson and Mr. Hoare, where the judge charged the barrister with a design to bring the King's commission into contempt. "No, my lord," said Hoare; "I have read in a book, that when a peasant, during the troubles of Charles the First's reign, found the King's crown in a bush, he showed it all marks of reverence; but I will go further,—I will respect it on a bramble!" A fracas is recorded by Regan between Chief Justice Clonmell and Curran, when the judge having attempted, with a red and inflamed countenance, to browbeat and overbear the advocate, he concluded his rejoinder, "Does your lordship think I am that silly dog to bay that moon, to bay that moon which I am not able to extinguish?" The circumstance is more

curious than the diction, for if the Judge told this story he reserved the point.

A more startling breach of professional etiquette attended another escapade of the same intemperate judge. For some harsh and unjustifiable remarks in court to a barrister of the name of Hackett, the Chief Justice was constrained, in consequence of resolutions passed at a meeting of the whole bar, to confess and apologize for his misconduct in the public papers.* What English lawyer, in his wildest dream, could fancy Judge Buller, or Lord Ellenborough, stooping to such a submission? But, indeed, the possibility was equally remote of their offering an adequate provocation for the indignity.

On another occasion the precipitancy of Mr. Justice Buller allowed his quondam pupil to gain the advantage over him. Erskine, in defending a prisoner under prosecution for a libel, quoted a sentence or two from a printed book; he was hastily interrupted by Judge Buller, who said, "It was no defence of one libel to quote another, and a worse, in support of it." Erskine immediately turned to the jury, "You hear, gentlemen, the observation of his lordship; from that observation, I maintain, you must acquit my client. My quotation is from Locke; shall we condemn a writer whom the judge declares not to go the length of that great man?"

"I must do Mr. Justice Buller," says Lord Eldon, in the Anecdote Book, "the credit of recording, that in my opinion he had more candour as a judge than the profession in general thought he possessed. He was once trying an issue where I had to rise to reply after the defendant's case was closed, and said to me, 'Mr. Scott, you are not going to waste the time of the court and of the jury by replying! You have not a leg to stand upon.' Now this was very awkward,—a young man, and the judge speaking so decidedly. However, I said, 'My lord, in ninety-nine cases out of a hundred I would sit down, upon hearing the judge so express himself; but so persuaded am I that I have the right on my side, that I must entreat your lordship to allow me to reply, and I must also express my expectation of gaining the verdict.' Well, I did

* Life of Grattan, by his Son.

reply, and the jury,—it was a special jury,—retired, and after consulting six or eight hours they returned, and actually gave the verdict in my favour.

"I went to Carlisle, and there Buller sent for me, and told me he had been thinking over that case on his way from Newcastle, and he had come to the conclusion that he was entirely wrong and I was right; therefore he had sent for me to tell me this, and to express his regret for having stopped, or rather attempted to stop, me in court. This was very handsome in him, but it certainly had been a very awkward predicament for a young man."*

But though starts of temper may, in some few rare instances, have betrayed the judge into sayings and acts of indiscretion, still more rare and unfrequent are the instances in which the ingenuity of counsel detected slips of memory or errors in judgment. That he sometimes decided wrongfully there is no doubt; but, considering the number of new points which daily arose for his decision, the wonder is that he should have been right in so many, and not that he was fallible in a few. But he brought to the judgment of every case a mind saturated with learning, and in his numerous common-place books had supplied the defects of former reporters. It was almost sad to behold him, in latter days, recurring, with sunken cheek and attenuated frame, to those treasures of his youthful industry; for to these and similar labours the spectator might well attribute his premature decay.

In the winter of 1799 this venerable judge was seized with an illness which brought with it a total prostration of his physical energies. In the following year he was not able to resume his seat in court even for a day. He delayed tendering his resignation, in compliance with the solicitations of his colleagues, and in the natural hope that he might yet regain vigour; but when two terms had passed without change, and the warmth of summer seemed to bring no restoration, he visited the Chancellor on the 4th of June, and arranged that he should resign his seat on the following

* Abridged from Twiss's Life of Lord Eldon.

Friday. He paid visits to several other friends on that morning, returned to his house, in Bedford Square, to dinner, and afterwards amused himself for a short time in playing at piquet with his niece. She observed some change in his countenance, and hinted her apprehension that he was unwell; he acknowledged that he felt himself seized with a degree of languor and faintness for which he could not account, went to bed, and early the next morning expired without a groan, the immortal spirit having departed so easily that those who stood around could not ascertain the exact moment of its departure. He died on the 5th of June 1800, at the comparatively early age of fifty-four. His body was interred, without pomp, in the churchyard of Saint Andrew's, Holborn.

He had married very early in life, before attaining his majority, and was succeeded in his title and estates by his son, Sir John Buller Yarde, who had exchanged his surname for property of considerable value. His wealth was estimated at above eighty thousand pounds, for the accumulation of a greater part of which he was indebted to his professional income. He had been bequeathed the sum of two thousand pounds by Lord Mansfield, in acknowledgment of his having performed the larger portion of his judicial duties during the last three years of his life; a munificent legacy in the opinion of many, but which, if considered as a debt, (and so, we believe, the noble lord always held it,) appears to have been made matter of very nice calculation. Sir Francis was a man of unexpensive habits, and for several years led a life of seclusion at Turnham Green, but one Armstrong, a sheriff's officer, having retired on his gains, and built a house next door, the judge, who did not like to be thus elbowed by a subaltern of the law, withdrew to the more congenial region of Bedford Square.

In person he was below the middle stature, and of spare habit, but his countenance was remarkably handsome, and beaming with intelligence. The large lustrous eye, and commanding forehead, gave noble witness of the soul within. In private life, he united an amiable temper with the most frank and conciliating manners; his flowing courtesy was

calculated to put the young and diffident at their ease, and make those of less polished demeanour feel quite at home in his company. There is a tradition on the Oxford Circuit, that he once met at the first assize town with a very unsophisticated sheriff, who bluntly demanded of his lordship, as he was stepping into his carriage, whether he was a bonâ fide judge, —(the worthy functionary made but one syllable of fide), as they had been so often fobbed off with serjeants in those parts. When satisfied on this important particular, he took his seat aside of the judge. A grave severity on the countenance of Mr. Justice Buller occasioned some misgivings in the mind of the sheriff, who expressed his fear that he had unwittingly done something wrong. "It is certainly," said his lordship, with a smile, "against etiquette on these occasions for the sheriff to take his seat fronting the horses, unless,"—he put his hand on the gentleman, who was starting up,—"unless invited by the judge as I now invite you." Cradock tells a story of a learned predecessor's encounter with another sheriff, not unamusing. The world was then not so highly refined as at present. After the usual opening of common topics, such as the roads and the weather, the high sheriff began to feel himself a little more emboldened, and ventured to ask his lordship whether, at the last place, he had gone to see the elephant. The judge, with great good humour, replied, "Why no, Mr. High Sheriff, I cannot say that I did, for a little difficulty occurred; we both came into town in form, with the trumpet sounding before us, and there was a point of ceremony to be settled, which should visit first."

To the glowing merits of Sir Francis Buller, both in public and private, there was, however, a back ground of shadow. The almost perfect portraiture of a judge, which the pages of Durnford and East present, was disfigured by an appetency for political intrigue, and his somewhat unscrupulous use of borough influence for purposes of party. His many virtues in domestic life were also tarnished by an inordinate love of money and passion for high play, a failing which betrayed him more than once into situations unbecoming his dignity. To his excellent social qualities a blemish has been also affixed by the late Sir Samuel Romilly, upon much slighter

evidence. That grave and censorious critic has thus recorded the circumstance which led to the charge in his diary:—

"A person of the name of Hardy, who served Mirabeau in the capacity of amanuensis, having abruptly left him, though his wages remained unpaid, suspicion naturally fell on him, and the count prosecuted him at the Old Bailey. The evidence was very slight, and the man was properly acquitted, but nothing at all discreditable to Mirabeau appeared. What was my astonishment, therefore, some years afterwards, when Mirabeau had by his conduct in the National Assembly drawn the attention of all England upon him, to hear, as I did, that Mr. Justice Buller had stated in different companies, that Mirabeau had had the villany, when his servant demanded his wages of him and threatened him with an arrest, to charge him with a felony, for which there was so little foundation that it was proved upon the trial that Mirabeau had never been possessed of so many shirts as he had accused his servant of stealing. That Mr. Justice Buller deliberately circulated these untruths, knowing them to be such, I do not believe. He had a very imperfect recollection of the trial, although he had himself presided at it; he fancied what he had stated; he did not give himself the trouble of looking back to his notes; and it did not seem to him to be very important that he should be scrupulously exact respecting a man who had already so bad a reputation, and who would not be the better or the worse for what was thought of him in England."

The judge had previously suffered both from attacks of gout and a slight stroke of paralysis, which left its usual mark in a partial failure of memory. His consequent mistakes in summing up, confounding occasionally the witness with the defendant, have been noticed and maliciously exaggerated in memoirs of the time.* To the effects of illness, and not to habitual carelessness of narrative, may justly be attributed a mistake, which when explained discovers so slight a speck on the surface of his social good qualities that an unfriendly spectator must use the microscope to detect it. One amiable trait of Mr. Justice Buller deserves especial mention. He was the active and zealous patron of many young men in the profession, whose studies he promoted,

* Holcroft's Life of Public Characters.

without regarding his own time or trouble, by the kindest attention and the most willing assistance. By a short note of compliment, or scattering a few words of praise, he has cheered the hearts of many who were drooping under discouragement, and, by inspiring self-confidence, has lifted them to eminence. He befriended Fearne, soothed the sensitive spirit of Hargrave, and caused the promotion of Gibbs. To Law, when smarting under the wayward displeasure of Lord Kenyon, he displayed the most marked attention, and, by his frequent commendations, upheld the fame of that able lawyer when it might otherwise have been overborne by prejudice. To Abbott, afterwards Lord Tenterden, he was a still more efficient patron. Abbott (according to Sir E. Brydges) having become a member of his household as tutor to his sons, with the intention of afterwards taking orders, Mr. Justice Buller detected his admirable legal talents, persuaded him to choose the law as his profession, furnished him with the funds for entering an attorney's office, and thus became the fortunate means of giving to the court which he loved one of the ablest chiefs that ever presided over it.*

It is pleasant, in reviewing the lives of those great judges who have ennobled Westminster Hall, to notice the alacrity with which, having profited so much themselves from generous patronage, they have sought out and cherished latent or rising talent at the bar. With an anxious care, similar to that of the priests of old, who watched over the young ministering at the altar, that the sacred fire might never be extinguished, they appear to have been always on the search for lawyers worthy to be their successors, and deserving promotion, under whose administration those laws which they treasured as their inheritance might be handed down pure and untarnished. Nor has their solicitude been unrewarded. Mansfield, Buller, Kenyon, Ellenborough, Tenterden,—these form a series of names and titles, which shed a lustre round the law and its professors; and their memories, we may rest assured, in the proud language of Milton, 'God and good men will not let die.'

* Sir E. Brydge's Autobiography.

CHAPTER II.

THE LIFE OF LORD KENYON.

It is related in the amusing life of Sir Leoline Jenkins that the French courtiers seemed to entertain but a mean opinion of the old-fashioned judge, 'being not a man of finesse, or of easy carriage and assurance,' and that one of them, more conceited than the rest, asked him in what place or country he was born? Sir Leoline answered that he was a Cambro-Briton; but the Frenchman being still at a loss, desired to hear some of the language of the place, and the expression he chose was, "Nid with y bag mae adnabod cyffyldy," which is a Welsh proverb signifying that the goodness of a woodcock is not to be known by his bill. The quaint truth of this national adage was not more applicable to the homely, but excellent, Admiralty judge than to the subject of the present memoir. Seldom have great talents and profound acquirements been arrayed in a more ungainly garb, or more disfigured by an uncouth address. But in retracing his course we shall discover concealed, beneath obvious defects of speech, and mien, and manner, the presence of those qualities which entitle their possessor to rank among the best and most able of our lawyers.

Lloyd Kenyon, second son of Lloyd Kenyon, by Jane, daughter of Robert Eddowes, of Eagle Hall, in Cheshire, Esq., was born at Greddington, in Flintshire, on the 5th of October 1732. His father lived independently on a small income as a country gentleman, and held that brevet rank which is conferred by a commission of the peace. He had become possessed of the estate of Greddington by marriage, having resided before at the Bryn, in the same parish of Hanmer, where his father had set the example of acquiring property in wedlock, and domiciled himself with the heiress of Mr. Luke Lloyd. Though somewhat reduced in fortune,

the family were originally of consideration, first settled at Winwick parish, and afterwards at Peel Hall near Bolton-le-Moors, in Lancashire. Two of his ancestors represented Clitheroe and Winwick at the close of the seventeenth century, and another was deputy governor of the Isle of Man, under Lord Derby. Young Kenyon was sent early to Ruthin grammar-school, which retains a long established reputation of being one of the best classical foundations in the principality, and was then under the able governance of Dr. Hughes. Here, however, the boy only staid long enough to acquire a little Latin, and no Greek. His father's fortunes did not permit his remaining a sufficient time to drink deep at the well of classical knowledge, for he had three brothers, and was not destined for any of those professions which were then alone thought to require a matured education. At the age of fourteen he was articled to Mr. Tomkinson, an attorney in large practice at Nantwich, in Cheshire. In the office of this gentleman he laboured assiduously seven years, and became so great a favourite from his shrewdness, diligence, and thrift, that he expected, at the expiration of his clerkship, to be admitted into partnership. Fortunately for the clever lawyer, and for the law itself, these expectations were not realized. The terms could not be arranged, and conscious that he was fitted for better things than the litigation, or conveyancing business, of a little provincial town, Kenyon determined to attempt the higher walk of the profession, and to venture on London. The death of his elder brother, a member of their father's college, St. John's, Cambridge, confirmed a resolution which must have formed the subject of frequent day-dreams in the mind of the young lawyer, who was then also, strange to say, a tyro poet.

During his clerkship at Nantwich, not the most romantic of Cheshire country towns, the diligent attorney's clerk, in his hours of relaxation, perpetrated a copy of verses, which he sent, in the first glow of successful authorship, to his father. Perhaps there never sat at the desk one less likely to realize the description of the satirist,—

> "Some youth, his parents' wishes doom'd to cross,
> Who pens a stanza when he should engross."

And as the lines did not exceed the legal standard of perfection, were chiefly dedicated to the praise of Welshmen, and breathed not a word of love, they might be considered sufficient to gratify a father's pride, and obtain the paternal blessing. The young Corydon thus commenced his pastoral effusions: —

> "Whilom as through the distant groves I stray'd,
> And tender pastorals on my flag'let play'd,
> The chirping birds in songs their joys exprest;
> All nature in a gay attire was drest."

Then straying to a land of freedom, and gazing at the temple of liberty, the law-poet eulogized in these fervid strains the hero of Welsh idolatry, the great Sir Watkin Wynn: —

> "There Watkin stood, firm to Britannia's cause,
> Guard of her ancient manners, and her laws.
> Oh, great good man! borne on the wings of fame,
> Far distant ages shall revere thy name;
> While Clwyd's streams shall lave the verdant meads,
> And Snowdon's mountains raise their lofty heads;
> While goats shall o'er thy hills, O Cambria, stray,
> And day succeed to night, and night to day,
> So long thy praise, O Williams, shall remain
> Unsullied, free from dark oblivion's chain."

There are many more hexameters, but this specimen may probably suffice. There is more rapture of poetry, even though clothed in prose, in the following diatribe by Cobbett, upon the labours of that desk at which young Kenyon had been patiently toiling, than in these rhapsodies: —

"When I think of the saids and so forths and the counts of tautology, that I scribbled over,—when I think of those sheets of seventy-two words, and those lines two inches apart,—my brain turns. Gracious Heaven! If I am doomed to be wretched, bury me beneath Iceland snows, and let me feed on blubber; stretch me under the burning line, and deny me the propitious dews: nay, if it be thy will, suffocate me with the infected and pestilential air of a democrat's club-room; but save me, whatever you do, save me from the desk of an attorney."

With more sober retrospection, and to raise himself above the attorney's desk, Mr. Kenyon, in the summer of 1755,

took chambers in, and was matriculated at, the Middle Temple. Thirty years afterwards he was unpleasantly reminded of Mr. Tomkinson and Nantwich, by having to pass from his seat of justice in the Rolls Court into the witness box of the King's Bench, to prove the execution of a deed, to which he had been an attesting witness.

The life of a student, shut up with his books in a fourth story of Brick Court, does not present many topics of personal detail. Thrown on his own resources, narrow and scanty as they were, Mr. Kenyon knew that he must be the artificer of his fortune, and applied himself with hearty good will to the task. To become a proficient in the science of the law was with him an absorbing passion—

"His food, his sleep, his study, and his pastime."

Like the venerable judge to whom we have before compared him, he had such a remarkable settled gravity and serious deportment, that even in the youthful part of his life he displayed but little of the youth. Against the coarser vices his correct moral principles proved an easy safeguard, and he had no relish or leisure for dissipation. Dancing appeared to him what Cyril Jackson termed it,—"a roundabout way of reaching the bottom of the room;" could his finances have allowed a visit to the ballet he would, with Southey, "have hamstrung the fellows;" the opera was to him, as to Mr. Scott, according to his punning confession, "opera atque labores;" to him the reading of Paradise Lost would have been, in the phrase of Fuseli, "a very tough job." Apollo and Littleton, says an old poet, seldom meet in the same brain*, and it must be confessed, that however deeply imbued with the spirit of Coke on Littleton, the organ of imaginativeness was wanting. He tolerated occasionally, but could not enjoy, the drama. Thus in later days he dropped asleep amid the tumults of drum and trumpet at the first representation of Pizarro, and Sheridan was piqued

* Wycherley, in his "Plain Dealer," puts the same notion in the address of Old Fox to the Widow Blackacre: "O lady, lady, all interruption and no sense between us, as if we were lawyers at the bar: but I had forgot Apollo and Littleton never lodge in a head together

to exclaim, "Alas! poor man, he fancies himself on the bench!" But in truth the lawyer felt drowsy, because his senses were far away, because he was *not* on the bench.

To a young man of his staid temperament, the scantiness of his purse proved but a slight inconvenience, and he rated highly the habits of frugality and temperance with which it enforced compliance. Far from agreeing with the Roman satirist,

> "Haud facile emergunt, quorum virtutibus obstat
> Res angusta domi,

which our great moralist has well rendered

> "Slow rises worth by poverty deprest,"

he thought the reverse of this axiom more consistent with the truth, and that it was a serious disadvantage to a young man going to the bar, paradoxical as the remark might appear, to be sufficiently provided for. When asked by a rich friend as to the probable success of his son, he thus pithily gave the fruits of his experience, "Sir, let the young man forthwith spend his fortune, marry, and spend his wife's, and then he may be expected to apply with energy to his profession." Upon the same notion, Sir Astley Cooper accosted a pupil whose father had been reduced to bankruptcy, upon hearing of his misfortune, in these remarkable terms: "I condole with your family, but I congratulate you. This will be the making of you; it was all that was wanting to your professional success."* In the same spirit Erskine spoke of his wife and children twitching at his gown, and constraining him to exertion; but with all deference to these great authorities, modern experience would rather tend to dissuade students from hazarding the experiment, lest their nerves perchance should be shattered, and their strength of mind broken for ever, beneath the combined pressure of anxiety and privation.

Among the few fellow-students with whom Mr. Kenyon formed an intimacy, from their dining together in hall during term, were two young men of very different habits and dis-

* Memoirs of Sir Astley Cooper.

positions from his own, but united by similarity of studies, and destined to play distinguished parts in after-life,—Dunning and Horne Tooke. "They used generally," says Steevens*, "in vacation time to dine together at a small eating-house near Chancery Lane, where their meal was supplied to them at the charge of 7½*d.* a head." "Dunning and myself," added Tooke, when telling this to his friend Steevens, "were generous, for we gave the girl who waited on us a penny a-piece, but Kenyon, who always knew the value of money, rewarded her with a halfpenny, and sometimes with a promise." As he had no false pride, he was not ashamed in his days of greatness to allude to these humble meals, and point out the place where the ham and beef shop stood. With Tooke the companionship was of short continuance, for a man of his strict piety could not endure to shake hands with a latitudinarian both in religion and politics, but the intimacy between him and Dunning endured through adverse and good fortune to the last. That mercurial lawyer, with habits of application neither close nor systematic, enjoyed the happy gift of oratory which Mr. Kenyon wanted, and rose rapidly in name and fortune, while his more saturnine friend remained comparatively unknown. In the life of Murphy there is given an amusing instance of the way in which Dunning loved to play with his petulance. When Mr. Kenyon came to the rooms of the new member for a frank, he directed it "North Wales, near Chester," an addition which so wounded the jealous spirit of the ancient Briton, that he threw down the envelope in wrath, and exclaimed, "Take back your frank, Sir, I'll have no more of them." Dunning interposed between him and the door, and soon pacified his choleric, but useful friend. He could not afford to part with an associate, whose diligence often supplied cases for which he might otherwise have searched in vain, and furnished him when immersed in business with sound opinions. He, in turn, supplied valuable memoranda of the arguments he had urged in banc, and the admirable judgments of Lord Mansfield. These our young lawyer carefully noted in his common-place book, and contrived

* Memoirs of Horne Tooke.

to amass a large collection of MSS., which were in general more full and complete than the reports of Strange and Salkeld, and even Burrough, and to which he often referred with satisfaction in his decisions on the bench.

Mr. Kenyon was called to the bar in Hilary Term 1761, but the conversion of the student into an utter barrister was a change merely nominal. He had no professional connexion in London, and disdained to stoop to those petty artifices, by which, in the absence of interest, a business may be sometimes forced. Though year after year passed away without introducing more than an occasional client to his chambers, he studied as hard as if he had seen the large fees in present, and the judgeship in distant, perspective, which at length so amply rewarded his labours. One line—a line fraught with instruction—includes the secret of his final success,—he was prudent, he was patient, and he persevered. The spirit of despondency had indeed at one time almost mastered his dogged determination; after ten years diligent, but apparently vain, pursuit, he would gladly have quitted his profession and have taken orders, if he could have obtained the small living of Hanmer in his native parish. Never let the mature but desponding lawyer forget that had Scott consulted his own sinking inclinations, he would have been a provincial barrister at Newcastle-upon-Tyne, instead of Lord Chancellor; that, had Kenyon yielded to temporary depression, he would have been a Welsh parson, and not Chief Justice of England. The line of demarcation appears to have been less broadly drawn at that period than it has been since between the common law and equity courts, and our indefatigable lawyer alternated between the two, but paid the more especial attention to the Court of Chancery. Without confining himself strictly to what is called chamber practice, he made conveyancing and drawing bills in equity his peculiar study; acquiring by slow but sure degrees, "sensim sine sensu," a reputation with the profession of being a sound lawyer, a neat and safe draftsman. In compliance with a custom, which has prevailed even so late as the days of Romilly, he went the Oxford circuit, and attended sessions at Stafford and Shrewsbury for ten years, a listener to the good things of other men rather than utterer

of his own; silent as a learner where he might have taught; being there drilled, however, into that intimate and peculiar acquaintance with the fourth volume of Burn's Justice, which astonished the Court of King's Bench so much on crown-paper days, when displayed by an equity lawyer. This universal erudition,—the acquisition of so many distinct branches of professional knowledge now rarely sought for, unless hurriedly and on the surface by provincial barristers,—forms an important feature in his legal character. Others have been distinguished for their science in particular departments; some as real property lawyers, some as black-letter lawyers, some for their profound acquaintance with crown law, but the labour of Mr. Kenyon comprehended them all. It now and then happened that, sitting in the back rows, he could suggest, as amicus curiæ, some clause in a forgotten act of parliament which had escaped notice; and though Mr. Thurlow, the then Attorney-General, declared with an oath, that he did not pretend to carry the statute-book in his head, he saw the great advantage of gaining so useful and pains-taking an auxiliary, and made such favourable overtures to the learned stranger, that from this period he shared with Hargrave the toil and profit of being the lion's provider. It is an encouraging truth to those who feel dispirited from failure at the commencement of their career, that however much the exact time of accession to business may depend on opportunity and chance, sound legal knowledge will command success, and that the reputation of a real lawyer must eventually prevail over adverse fortune and neglect. Several of Lord Kenyon's most distinguished colleagues had to struggle at starting with similar discouragements. Thurlow wasted in taverns the evenings for which the profession had no call; Grant bore a musket in Canada to relieve his vacant hours; and Scott travelled his Northern circuit in the hopeless security of undisturbed leisure. But they neither gave way to despair nor carelessness, steadily pursuing their course through the flickering shadows of doubt and gloom, and to the clouded dawn of each a bright day succeeded.

Mr. Kenyon had been twelve years in the profession, and had attained the mature age of 39, before he ventured on the

important step of matrimony. The fact of his contemplating such an eventful change furnishes sufficient evidence of the increased entries in his fee-book; for on a person of his prudent and calculating character, no maxim of the political economy school was likely to be more binding than its favourite rule, that without an adequate fortune a man has no more right to take a wife than to set up a carriage. In 1773 he was married to his cousin Mary, third daughter of George Kenyon, of Peele, in Lancashire, a lady whose disposition accorded happily with his own, and with whom he led a long life of domestic comfort. By this union he had three sons, two of whom survived him, and to whom he bequeathed his accumulated gains and savings, a fortune of 200,000*l.*, besides conferring upon them during his lifetime sinecure offices of considerable annual value. Each succeeding year, which brought its additional tribute to the amassing this ample fortune, proved that he had not commenced an establishment rashly. His name became familiar to those who had the conduct of causes, as a forcible, though not an elegant advocate, whom they might depend upon for being, in conventional phrase, always up to his points, and conversant with his brief. The large amount of his chamber practice, larger perhaps, than that of any rival's, though better known to fame, attests the confidence even then reposed in his professional knowledge and skill. It appears from his private fee-book that in 1781, he received 2,369 guineas for cases and opinions alone, and in the following year, the last of his continuing at the bar, 3,020 guineas. Into court business his fame emerged more slowly. In 1779 he was retained as one of the counsel for Lord Pigot, in the state prosecution of Stratton and others for deposing him from his government. The trial, dull and uninteresting in itself, is distinguished by the perfect galaxy of counsel it included, all of whom were either ennobled or preferred to high station,—Wedderburne, afterwards Earl Rosslyn; Wallace, Attorney-General; Mansfield, in 1804 Chief Justice of the Common Pleas; Dunning, Lord Ashburton; Kenyon; Arden, Lord Alvanley; Wilson, in 1786 a judge of the Common Pleas; and Erskine, Chancellor. A few

months later we find Mr. Kenyon selected to be leading counsel for the eccentric Lord George Gordon, when the intolerant turbulence, and fanatical fury, of a miscalled Protestant mob had brought down on the head of their foolish leader a prosecution for high treason. The choice was not a happy one, for the clever equity draftsman wanted oratorical power, though he harangued the jury with much homely vigour. His junior, however, Mr. Erskine, amply atoned for his leader's deficiencies in the art of rhetoric; and the appearance of the prisoner himself, standing at the bar with a large Bible spread open before him, from which he prayed permission to read four chapters of Zechariah, may have moved the jury to compassion. "I never yet," said Mr. Kenyon, "stood as counsel for a person who had so great a stake put in hazard. You are to separate one transaction from another, and to see how far each goes separately. You are not to bundle them together, and see whether this bundle of nothings can make out something. You must be cautious in a case of blood." A chance answer to one of his questions in cross-examining one of the principal witnesses for the prosecution, tended more to the acquittal of his client than all his rough-shod arguments. It is a curious instance how successful the bullying system may sometimes prove, and how completely it may trepan a jury. The witness had described one of the mob carrying a flag as a brewer's servant:—"he appeared to me like a brewer's servant in his best clothes."

"Q. How do you know a brewer's servant when he is in his best clothes from another man?

A. It is out of my power to describe it better than I do; he appeared to me to be such.

Q. I ask you how, by what mark do you distinguish a brewer's servant from another man?

A. There is something in a brewer's servant, in his condition, different from other men.

Q. There may be, for what I know; but tell me how you distinguish a brewer's servant from another man?

A. Be so good as to state the question again.

Q. If there can be a doubt what the question means in any one of this audience, you shall have it repeated. You

said this man was like a brewer's servant. I asked you by what mark you are able to distinguish a man to be a brewer's servant rather than of any other trade?

A. I think a brewer's servant's breeches, clothes, and stockings have something very distinguishing.

Q. Tell me what in his breeches and the cut of his coat and stockings it was by which you distinguished him?

A. I cannot swear to any particular mark." *

The poor man, too much bewildered to explain his meaning, though very easy of explanation, was hooted from the box as if he had sought to impose on the jury, and Erskine, in his able address, dexterously confirmed their suspicions, that a perjured story had been wonderfully detected. "You see," he remarked, "by what strange means villany is discovered; perhaps he might have escaped from me, but he sunk under that shrewdness and sagacity, which ability without long habits does not provide. Gentlemen, you will not, I am sure, forget, whenever you see a man about whose apparel there is any thing particular, to set him down for a brewer's servant." This delicate compliment to his superior skill must have afforded great pleasure to Mr. Kenyon, for even the hardest natures are soothed by adroit flattery, and led, no doubt, to that friendly feeling, amounting in later days to a kind of paternal regard, with which he viewed such a courteous junior.

The name of Kenyon had now become common in the mouths of men, and on the arrival of those halcyon days to the leaders of the profession,—times of trouble to the state and change in the cabinet,—on the accession to power of the Fox and Rockingham administration in April, 1782, he was appointed Attorney-General in the room of Wallace. The surprise at his promotion is said to have been the more general from his not having previously filled the office of Solicitor. He had never taken any part in politics, and certainly could not be accused with truth of being a Foxite; but whether he owed his appointment to professional merits, or to the friendship of his powerful patrons, Lords Thurlow

* State Trials, vol. xxi.

and Ashburton, the choice did the ministry honour. The Chancellor had previously nominated him Chief Justice of Chester, a union of characters which, however objectionable in principle, has been frequently made by successive administrations. There passed some notes relative to this appointment, which contain beautiful specimens of the Spartan style. Serjeant Davenport, wishing to chime in with Lord Thurlow's humour, wrote the pithy question, "The Chief Justiceship of Chester is vacant, am I to have it?" The reply was equally short and to the point, "No, by G—d, Kenyon shall have it."

It was a situation peculiarly gratifying to his feelings, as the circuit embraced his native county, Flintshire, and he was, like his predecessor in office, Chief Justice Vaughan, a very strong Welshman. On his circuit at Wrexham the Chief Justice of Chester encountered his former colleague, Erskine, who came down specially retained to defend the Dean of St. Asaph for libel, and vehemently protested against the postponement of the trial, which was moved on account of publications, issued at Wrexham, on the eve of the trial, to prejudice the minds of the jurors. Even after the court had decided in favour of a postponement the protest was persevered in, and with difficulty arrested by the firmness of the Judge.

"Dean of St. Asaph.—Let me, if innocent, once more stand up as an honest injured man; if guilty, let me be dragged to a dungeon.

"L. C. J. Kenyon.—When the jury have given their verdict, if they find you guilty, the Court will then consider what judgment to pass.

"Dean of St. Asaph.—My lord, in God's name, let me have a verdict one way or the other; don't let me be kept longer in suspense.

"L. C. J. Kenyon.—I desire that after I have given the judgment of the Court, that judgment may not be talked about. I have given it upon my oath, and am answerable to my country for it. I have been before reminded that these things are not passing in a corner, but in the open face of the world; I hope I need not be admonished that I am to admi-

nister justice; if I have done amiss let the wrath and indignation of Parliament be brought out against me; let me be impeached; I am ready to meet the storm whenever it comes, having at least one protection,—the consciousness that I am right. In protecting the dignity of the Court, I do the best thing I can do for the public; for, if my conduct here is extra-judicially arraigned, the administration of justice is arraigned and affronted, and that no man living shall do with impunity."

There was an incongruity from which the Chief Justice of Chester might well wish to escape, in the same individual trying the very libel as judge which he might elsewhere prosecute as first law officer of the Crown.

His learning and integrity would have spared Sir Lloyd Kenyon all risk of exposure to the disgrace which befel a brother counsel and Welsh judge on the South Wales circuit, who had advised in London in favour of an action, and was, on nonsuiting the plaintiff, assailed with his indignant remonstrance, "Are you not ashamed to take the King's money for giving an opinion one way, after taking five guineas from me for giving an opinion the other?"

The new Attorney-General appeared to entertain as little notion of official intrigue, or ministerial subordination, as if he had been a back-woodsman newly caught. Having been elected into parliament by a close borough, he commenced his career against public accountants with such violence as to fill the Treasury bench with consternation, and elicit a friendly caution from Fox. When Lord John Cavendish, then Chancellor of the Exchequer, moved a resolution prohibiting officers from making any use of the public money in their hands for their own advantage, he declared "he did not mean to oppose the resolution, but at the same time he would not have it understood that he precluded himself in the smallest degree from a full right and liberty to have discussed in a court of justice the question, whether the public might not call upon the great servants of the public to account for the great emoluments they had made by means of the public money. He did not mean to give any opinion on the subject himself, but he was determined to be at liberty to have it

discussed before a proper tribunal, if such a discussion should appear to him necessary. He spoke not from any ill-will to any man alive, but solely from a sense of duty in an office which he had been unexpectedly, as he was undeservedly, called to fill. He did not know how long he might remain in it, but if he should be dismissed from it he should return to much domestic happiness, which he had enjoyed before he had been called into public life, but while he remained in it he was determined to do his duty."* The introduction of these topics proved not less invidious than unfortunate to his colleagues.

It was urged triumphantly, "why should the executors of Lord Holland have many years to pay in his balances;" and gentlemen made no secret of their having come down to the house from curiosity to hear how the Right Honourable Secretary (Mr. Fox) would behave in a cause in which he was so greatly concerned. There certainly had not been, within the memory of the father of the house, so intractable an Attorney-General, whose stubborn independence of ministers and uncompromising principle contrasted strongly with the rough thorough-going partizanship of Thurlow and the servile suppliancy of Wedderburne. He moved six resolutions; and even when his four first had been agreed to, this pertinacious law officer of the Crown (not the servant of the ministry), withdrew the two last obnoxious resolutions, but moved, with a determined honesty, as if butting down his colleagues,—"That leave be given to bring in a bill to direct the payment into the Exchequer of the respective balances remaining in the hands of the Right Honourable Richard Rigby, late Paymaster-General of His Majesty's forces, and of the Right Honourable Welborne Ellis, late Treasurer of His Majesty's navy, for the use and benefit of the public, and for indemnifying them in respect of such payments, and against all future claims relating thereto." The result might have been foreseen. The supporters of the late government, aided by the personal friends of two influential statesmen, divided 127 to 116, and left the new ministry, as yet scarcely settled on the Treasury bench, in a mortifying minority.

* Parliamentary History, vol. xxiii.

When, on the death of the Marquis of Rockingham, and subsequent change in the premiership, Mr. Fox and a portion of the cabinet withdrew, Mr. Kenyon retained his office with Pitt as Chancellor of the Exchequer, and went out with the Shelburne administration in the spring of the following year. In December again, when the India Bill had wrecked the unfortunate coalition, he was re-appointed Attorney-General, having, while the ministerial changes were in progress, asserted his perfect independence. "He was not," he said, "in the secrets of those who were just gone out, or of those who were coming in, and therefore he did not know what measures were likely to be adopted; he did not know whether the Parliament would be dissolved or not, and, if it should, he did not know that he should have a seat in the next House of Commons, nor indeed did he wish it; but, let what would happen on that head, he would vote according to his conscience." After the recess the Attorney-General moved, for the second time, "that the Right Honourable Richard Rigby, late Paymaster-General of the Forces, do deliver to this House an account of the balance of all public money remaining in his hands on the 18th and 19th days of November last," stating, as a justification of his perseverance, "that the obligation of the oath he took, when he was sworn into office, compelled him to see that, as far as in him lay, all the money belonging to the public should be paid into the Exchequer with as little delay as possible."

Mr. Rigby declaimed with great vehemence against this harsh proceeding, complaining that he had not received that civility which was generally shown between man and man, and appealed to the House if any one in his situation had ever met with such treatment from an Attorney-General. "This prodigious obligation upon oath," he remarked sarcastically, "which galled the learned gentleman so much, was never felt to such a degree by the most able, honourable, and learned of his predecessors. Lords Camden, Thurlow, Loughborough, and the late Mr. Wallace, whose characters, he hoped, he might venture to oppose to that of the learned gentleman, never felt that the duty of their oath called for such a mode of proceeding as was that of the learned gentleman."

Mr. Rigby was at length driven, at much personal inconvenience, to furnish a clear debtor and creditor account with the public. With less success, but with equal zeal, to effect useful reforms, Mr. Kenyon introduced a bill, which passed through a committee of the house, to limit a writ of right to thirty years. Mr. Shadwell renewed the bill, under better auspices, in 1827, when, as he said, a greater spirit of inquiry and research was abroad, and a spirit of reform in all useful matters cultivated by all classes of persons. Lord Eldon has explained how it came to pass that with an honest desire for amelioration, and thorough knowledge, the Attorney-General did not achieve further improvement. "A little that is reasonable may be effectually attempted, when, if you propose all that is reasonable, nothing would be done. I was the more led so to think, because I well remember that Mr. Kenyon, and all lawyers of his day (and when had we better?) were preparing a bill for the improvement of the law, and because all could not agree in every thing proposed nothing was done." Sir Thomas Sewell having died in March 1784, Mr. Pitt conferred on the Attorney-General, whose legal acquirements he held in the highest esteem, the dignified office of Master of the Rolls, with a *baronetcy*. In the zeal of political friendship, Sir Lloyd Kenyon recommended the Premier to insist on the notorious Westminster scrutiny—a measure which signally failed in its presumed object, the discomfiture and disgrace of a formidable rival. In the ever-memorable speech which Fox delivered on this occasion, complaining of his wrongs, and taking exception to many of his judges, he inflicted a grave rebuke and signal chastisement on the zealous partizanship of his former colleague. "A third person there is," he said, "whom I might in reason challenge—a person of a sober demeanour, who, with great diligence and exertion in a very respectable and learned profession, has raised himself to considerable eminence—a person who fills one of the first seats of justice in this kingdom, and who has long discharged the functions of a judge in an inferior but very honourable situation. This person, Sir, has to-day professed and paraded much upon the impartiality with which he should discharge his conscience in his judicial capacity as

a member of Parliament in my case. Yet this very person, insensible to the rank he maintains, or should maintain, in this country, abandoning the gravity of his character as a member of the senate, and losing sight of the sanctity of his station both in this house and out of it, even in the very act of delivering a judicial sentence, descends to minute and mean allusions to former politics, comes here stored with the intrigues of past times, and, instead of the venerable language of a good judge and great lawyer, attempts to entertain the house by quoting, or by mis-quoting, words supposed to have been spoken by me in the heat of former debates and the violence of contending parties, when my noble friend and I opposed each other. This demure gentleman, Sir, this great lawyer, this judge of law and equity and the constitution, enlightens this subject, delights and instructs his hearers by reviving the interesting intelligence, that when I had the honour of first sitting in this house for Midhurst, I was not full twenty-one years of age; and all this he does for the honourable purpose of sanctifying the High Bailiff of Westminster, and defrauding the electors of their representation in this house. Against him therefore, Sir, and against men like him, I may justly object as a judge or as judges to try my cause."*

Not content with this dignified censure, the devoted followers of Fox embalmed the transgressions of the Master of the Rolls in the most celebrated political satire in our language, the "Criticisms on the Rolliad." Originally naming their work after Mr. Rolle, the (to them) obnoxious member for Devon, they appear to have been induced, by the similarity of name and of office, to add what they term a poetico-prosaical dedication to Sir Lloyd Kenyon. The title-page is adorned with a crest, the half-length of the Master of the Rolls, like a lion demi-rampant, with a roll of parchment instead of a Pheon's head between his paws. The likeness, we may be sure, was not a flattering one, nor so gratifying to his lady as the sketch that was taken by the boy Lawrence. It professed to show "the rough, hard, coarse features—the broad face 'distin-

* Fox's Speeches, vol. ii.

guished from vulgar ovals—the pert, no-meaning, puckering round the eye'—the clownish cast of countenance." After praising him for voting at the Westminster election as the delegate of his coach-horses, (he lived in Lincoln's Inn Fields, but voted in right of some stables,) the wits of that wicked miscellany sum up his parliamentary misdeeds in the following caustic satire:—

> "How shall the neighing kind thy deeds requite,
> Great Yahoo champion of the Hounhuhm's right?
> Oh! may they, gently pacing o'er the stones,
> With no rude shock annoy thy battered bones;
> But when a statesman in St. Stephen's walls,
> Thy country claims thee, and the Treasury calls,
> To pour thy splendid bile in bitter tide
> On hardened sinners who with Fox divide,
> Then they may, rattling on in jumbling trot,
> With rage and jolting make thee doubly hot,
> Fire thy Welsh blood, inflamed with zeal and leeks,
> And kindle the red terrors of thy cheeks,
> Till all thy gathered wrath in furious fit
> On Rigby bursts—unless he votes with Pitt."

The pain which Sir Lloyd Kenyon must have felt from this and similar quips, for he appears to have been remarkably sensitive to obloquy, was ere long soothed by the precious balm of promotion. The retirement of Lord Mansfield, long ardently anticipated, at length made a vacancy, which Mr. Pitt determined to fill with the nomination of his able parliamentary ally. During the four years of his presiding over the Rolls Court, he had comparatively withdrawn himself from public notice. Though fully master of all the cases submitted to his decision, his decrees were sometimes overruled, from an obstinate adherence to the rigid rules of law and to precedents, in opposition to the principles of more liberal and modern construction. Of his indomitable perseverance Lord Eldon gave this testimony to his son: "I am mistaken if, after I am gone, the Chancery records do not prove that, if I decided more than any of my predecessors in the same period of time, Sir Lloyd Kenyon beat us all."

The important appointment of Chief Justice of England, the most durable and one of the most dignified in the law, brought his merits and defects into general discussion; and it

must be confessed, that the voice of the profession and the public proclaimed loud dissatisfaction with the choice. But an impartial posterity will admire the discriminating judgment of the minister; for while the causes of popular odium have passed away, his judgments are stamped indelibly in the laws of his country. That he should have been unpopular can excite no surprise in those who remember the demeanour of the man. In May 1788 Sir Lloyd Kenyon was gazetted —Lord Kenyon, Baron of Greddington, and plumped down, if we may suit the word to the action, into the chief seat of the King's Bench, with little ceremonial observance of his colleagues, 'to whom he displayed a blunt, disregarding, almost cynical manner, the more marked from its contrast to the courteous dignity of Mansfield, and the grave, majestic bearing of Buller.' The new Chief Justice tried for several months, and it was at first thought successfully, to subdue emotions of anger. George the Third, who had a high regard for Lord Kenyon, congratulated him on his success at the levee. "My lord chief justice, I hear that since you have been in the King's Bench you have lost your temper. You know my great regard for you, and I may therefore venture to tell you that I was glad to hear it." The royal congratulation was indeed premature, if we may give implicit credence to the report of an eye witness, Mr. Espinasse. But on reading his amusing notes, we perceive a tone of exaggeration and caricature, and can readily understand why he should have been a prejudiced spectator, for what affinity of taste could there be between a rattling Irishman, more studious of repartee than reporting, and the staid erudite chief of his court. "The supercilious reception," says that prejudiced reporter, "which he gave to the opinions of the other judges, was not that merely of neglect, it bordered on contempt. He predominated over them with high ascendancy. They very rarely differed from him; if they did, their opinions were received with a coldness which stooped not to reply, or, if noticed, were accompanied with angry observation. He was irritated by contradiction, and impatient even of an expression of doubt of the infallible rectitude of what he had delivered as his judgment. In differing with

his predecessors he used no soft or measured language. Having occasion to contravene a dictum of Chief Justice Holt, he wondered that so great a judge should have descended to petty quibbles to overturn law and justice; and when a saying of Lord Mansfield was cited, that if a man had insured to the amount of 2000*l.*, and had interest on board to the value of a cable only, that would do, he declared that this was very loose talking, and should not be ratified by him. When a new trial was moved for against a ruling of his own, on the ground of mis-direction, he would scarcely give time to his colleagues to deliberate together, but at once blurted forth his judgment. "If the rest of the court entertain any doubt the case may be further considered, but I am bound to give the same opinion I formerly gave, not because I gave that opinion before, but because I am convinced by the reasoning that led to it." Whenever his brother judges ventured to differ from and overrule his decisions, (there were scarcely a dozen cases in the course of fourteen years which called for this exhibition of fortitude,) his manner evinced as much testiness as if he had received a personal affront. Thus, in the well known case of Haycraft v. Creasy, 2 East, p. 99, in which the defendant had told the plaintiff he knew, of his own knowledge, a certain lady was a woman of fortune, by which false representation the plaintiff was induced to trust her to a large extent, his colleagues thought the action could not be maintained, as there was no mala fides, no fraudulent misrepresentation. Lord Kenyon urged the contrary, with all the heat and passion of an advocate. "The attorney-general has stated this case trenched on the statute of frauds; he would only shortly reply, he thought it had nothing to do with it. If the present action could not be supported, he had now for twelve years been deceiving the people of this country. Was he now, when from years, perhaps, the progress of his intellect had been retrograde, to unsay it? Where could he go to hide his head, if this should now be recorded otherwise? What could he say to the people of this country? This was the ground he went on. Did the defendant affirm that which he did not know to be true? This he considered sufficient evidence to

support the declaration of fraud. It might not, perhaps, amount to moral turpitude, but it was, in his opinion, sufficient to constitute legal fraud." Grose, Lawrence, and Le Blanc, Js., on the other hand, thought the man a dupe, and not fraudulent. When they had finished, he exclaimed, "Good God! what injustice have I hitherto been doing!" It was visible to every person in court, that this ejaculation was not uttered in the penitent voice of regret for any injustice which he might involuntarily have done from a mistake of the law, but in the querulous tone of disappointed pride, from finding that the other judges had presumed to think for themselves, and to question the supremacy of his opinion." * Of his domineering spirit and tone of dictation, carried into private life, an amusing instance was told by Lord Eldon. "After dinner one day, when nobody was present but Lord Kenyon and myself, Lord Thurlow said, 'Taffy, I decided a cause this morning, and I saw from Scott's face that he doubted whether I was right.' Thurlow then stated his view of the case, and Kenyon instantly said, 'Your decision was quite right.' 'What say you to that, Scott?' asked the Chancellor. I said I did not presume to form a judgment upon a case in which they were agreed. But I added, that I thought Lord Thurlow had not mentioned to Kenyon a fact, which might perhaps appear materially to affect the decision, and I was about to state the fact, and my reasons for what I had said. Kenyon, however, broke in upon me, and with some warmth stated, that I was always so obstinate there was no dealing with me. 'Nay,' interposed Thurlow, 'that's not fair. You, Taffy, are obstinate, and give no reasons; you, Jack Scott, are obstinate too, but then you give your reasons, and d—d bad ones they are.' " †

To those that were "in authority under him," the barristers of his court, the manner of Lord Kenyon is reported to have been equally ungracious. "If a word or a sentence escaped from a counsel not quite in accordance with his sentiments, his temper blazed into a flame which could

* Note Book of a retired Barrister.

† Law Review.

scarcely be subdued by humility. On these occasions he gave loose to an unchecked effusion of intemperate expression, and his language was not chastened by the strict rule of good breeding." He petted, indeed, some few favourites, Erskine in particular, who now and then succeeded in catching a stray smile from the rugged chief. At the spoiled child of fortune he would occasionally shake his head in good humour, when disapproving of some argument in banc, "It won't do, Mr. Erskine, it wont do!" But even he could not venture too far, or sleep with impunity, for the well-meaning Bruin, as in the fable, would soon have scratched his face, in the excess of his vigilant zeal. To Law and other leaders, against whom he might have imbibed a casual aversion, his manner is admitted to have been singularly offensive. On this obnoxious King's counsel moving for a new trial unsuccessfully, Lord Kenyon could not refrain from the sneer, "Well, Sir, you have aired your brief once more!" In the trial of a disputed account, Mr. Baldwin requested his lordship to observe the distinction between the two bills. Lord Kenyon retorted, "Mr. Baldwin, if you will give me leave, I think I have just sense enough to comprehend this bill."* While thus offensive to several of those more advanced in the profession, he could not claim, as a set-off, the merit of being gracious and encouraging to the junior portion of the bar. "An irregular application," we are told, by the same censor, "though it proceeded from inexperience only, was received without the indulgence that was due to it; if made by the more experienced, it was refused with contumely." To this general harshness there were indeed many pleasing exceptions. When Mr. Garrow, early in his professional career, had concluded an able appeal at the bar of the House of Lords in favour of the validity of Mr. Fox's return for Westminster, the Master of the Rolls, though a strenuous partizan of the opposite interest, rushed to the bar, and, seizing the eloquent advocate by both hands, exclaimed, "Young man, I congratulate you. You have made your fortune. I never heard a finer speech in all my life." At

* Trial of George Rose, Esq.

the end of seven years Mr. Garrow waited on the Chief Justice; on his name being announced, his lordship came into the room, and, anticipating his request, exclaimed to Mr. Garrow, "You want a silk gown, I suppose; I have been expecting your application these two years." On his strong recommendation, the silk gown was at once conferred.

When the same successful counsel, in the maturity of his fame, objected sharply to a question put by Mr. Best,—it was one of the first questions he had ever put,—Lord Kenyon hastened to his protection. "It is not evidence at present; but Mr. Best is a very sensible young man, and will first put such and such questions (suggesting them), which will make it good evidence." With the same kindly spirit subduing a rough manner, the Chief Justice commended Shepherd, "as having no rubbish in his head." The temper of the judge was, however, quickly ignited by opposition, and it must be confessed that he sometimes came in collision with spirits as ardent as his own. Clifford, in particular, who some years afterwards figured as leader in the O. P. riots, taking a prominent station in the pit, in all the paraphernalia of band and wig and gown, delighted too much in tumults to quail before the terrors of this 'Jupiter Hostis.' The following scene is characteristic of the chief in his troubled mood; a contemporary used to mimic his Welsh intonation, which in anger was particularly distinguishable, with great effect. Mr. Clifford made his application with as much nonchalance as if he had been moving for a rule of course:—

"I humbly move your lordship for a writ of habeas corpus, to be directed to the keeper of Newgate, commanding him to bring into court the body of Benjamin Flower. I move it on a very full affidavit, made by Mr. Flower, which states—

"Lord Kenyon.—Is not Mr. Flower committed by the House of Lords for a breach of privilege?

"Mr. Clifford.—Yes, for a libel and breach of privilege.

"Lord Kenyon.—Then you know very well, Mr. Clifford, you cannot succeed. This is an attempt which, for the last half century, has been made every seven or eight years; it

regularly comes in rotation, but the attempt has always failed. You do not expect to succeed —

"Mr. Clifford.—My lord, I do expect to succeed. I should not make this application unless I knew I could support it. The affidavit states, that on the second of May last Mr. Flower was taken into custody at Cambridge for a supposed libel on the Bishop of Llandaff, published there; that he was carried before the House of Lords; that he was ordered to withdraw, and was afterwards conducted to Newgate. The affidavit also states, that he is not conscious of having published any libel on the Bishop of Llandaff, or on any other person; that he has not been put upon his defence, nor been tried or convicted of any libel or other offence.

"Lord Kenyon.—Does he swear that it is not a libel on the Bishop of Llandaff?

"Mr. Clifford.—He swears that he is not conscious that it is a libel.

"Lord Kenyon.—Another part of his affidavit is also false, that he was not put upon his defence. I happened to be one of his judges.—I was in the House of Lords at the time, and heard him make a very long defence. File your affidavit, Sir, that your client may be prosecuted. You shall take nothing by your motion.

"Mr. Clifford.—I certainly intend to file my affidavit."

After some further sharp controversy, Lord Kenyon said, "If you will have it, take your writ. It will be of no use to you. You move it merely by way of experiment, and without any view to benefit your client. I am very sure of that.

"Mr. Clifford.—I do not.

"Lord Kenyon.—You know it cannot benefit him. It is like the case of Alexander Murray, where two gentlemen, who had not been at the bar for forty years before, put on their wigs and gowns to resist what they conceived to be an encroachment on the liberty of the subject. The consequence was, that their client was sent back to prison, and they returned home as they came, and never appeared again in the profession.

"Mr. Clifford.—The case of Alexander Murray is very

different. It was the case of a contempt committed in the House of Commons.

" Lord Kenyon.—No, Sir; it was for a contempt committed out of the house.

" Mr. Clifford.—It was for a contempt committed in the house. He was originally brought before the house for his conduct in the Westminster election, but the contempt for which he was committed was, the refusing to kneel at the bar when ordered by the house." *

The sparring match ceased here, and five days afterwards the keeper of Newgate attended with Mr. Flower. After the return to the writ had been read, Mr. Clifford proceeded to argue that Flower was entitled to his discharge, and prefaced his argument thus: " My lord, when, in the strict and regular discharge of my professional duty I moved for a writ last Thursday, I little thought that I should now appear before your lordship in a twofold capacity, first, as counsel for Mr. Flower, and secondly, as a delinquent having a common cause with him, and complaining of your lordship for having adjudged me guilty of a contempt of court, in the same manner as Mr. Flower complains of the House of Lords, videlicet, without a trial, without evidence, and without defence. Upon that occasion, your lordship thought proper to assert that I made the motion merely as an experiment, contrary to my own opinion, and without any view of benefiting my client. If this be true, I am most undoubtedly guilty of a gross insult to your lordship, and of a high contempt of court, such as called for the severest reprehension. But I then told your lordship what I now repeat, that I should not have moved for the writ unless I could have supported it in point of law. I then thought I could, and the more I have reflected on the subject since, the more am I convinced that I can support it by unanswerable legal arguments; but although your lordship made this charge, you did not think proper to state the grounds on which you made it. Of this I have reason to complain. I do not know what right your lordship has, without just foundation, to impute such unworthy motives to me,—what your lord-

* Clifford's Pamphlet.

ship sees in me, what there is in my conduct or behaviour, what has appeared in my practice in this court,—that can warrant your lordship in casting so groundless an aspersion on my character. So much for myself." Mr. Clifford then drew a fancy portrait of a prime minister, who might degrade the House of Lords by inundating it with a crowd of low-born persons devoid of talents or respectability, and with no pretensions but their venality to the peerage, thus out-numbering and weighing down the ancient and hereditary nobles of the land, and rendering them mere ciphers in the state. The intemperate zeal of counsel was met, unfortunately, with equal intemperance from the bench. It was a sort of shuttlecock play of sarcasm and inuendo, which the judge compromised his dignity in keeping up.

"The learned counsel," said Lord Kenyon, "who has looked round on every side during his address to the court, has drawn a picture of a minister established in power by the voice of the people, and then doing a great many horrid things, and among others, filling the House of Lords with a banditti. The learned counsel, it is true, did not use that word, but persons who superseded the ancient nobility of the country. I happen to be one of that number. Of myself I will say nothing, but of the rest I will say a word or two. If we look to the history of the country, and consider who were made peers in former times, and who now form part of what he calls the hereditary nobility of the country, if we look back to the reign of Charles the Second, in the letters which form the word Cabal, will the memory of the learned counsel, who seems to think virtues and vices hereditary, furnish him with the name of no person, who was not very likely to devolve virtues to the succeeding ages! But no more of that. From what has passed, I am called upon to vindicate the honour of the House of Lords. Their honour stands upon so stable a ground, that no flirting of any individual can hurt them."

Mr. Flower was remanded to Newgate, and Clifford revenged himself in a pamphlet, in which he remarks, "We seldom observe in our hereditary peers those pedantic notions of impracticable morality, or that boisterous impetuosity

of manners, which sometimes accompany and disgrace, even in the highest situations, those who have been raised to them from the desk, merely on account of their industry and professional success." He quotes, with some felicity, a saying of his ancestor, Sir Thomas Clifford, in reprobation of Sir John Kelyng, the then Chief Justice of the King's Bench, who had committed him—"the foolishness of the man in doing it, the passion, the choler—these were his crimes."

As a companion to this sketch of a somewhat indecorous exhibition in the King's Bench, it may not be uninteresting to present a few scenes from another trial, in which Lord Kenyon measured weapons with his former fellow-student,* the litigation-loving Horne Tooke, and which is highly characteristic of the testy chief. His firm spirit, though murmuring and recalcitrant, appears to have quailed on this occasion before the more intrepid assurance of the defendant. It is the case of Fox v. Horne Tooke.

Erskine stated, that this action of debt was brought in consequence of a certain act of parliament; and, as he knew that Horne Tooke panted for an opportunity of making a speech, with much tact abstained from one himself, observing simply: "This act does not entitle us to enter into a discussion of the merits of any matter or thing relating to them, and I therefore shall certainly say nothing on this case, but merely put in the evidence that is necessary for Mr. Fox to maintain his

* In a work intituled "Peerage for the People," the anecdote which Stevens relates of Horne Tooke, Dunning, and Kenyon, is thus amusingly travestied. "Kenyon, Law, and John Scott, now Earl of Eldon, and the only survivor of the three, used frequently to dine together at an ordinary which we believe is still kept at Bedford Street, in the Strand. The repast of the party was frugal, while they cooled their thirst, not with the waters of Helicon, but with the water of the river Thames. The average amount of each man's bill was about 10*d.* or 10½*d.*, but it never exceeded a shilling even in the instance of Law, who was the most expensive of the three. The late Lord Erskine used to say that Kenyon invariably bilked the waiter—Scott sometimes gave her a halfpenny, while Law always came with his penny-piece." The whole of this story is pure fiction with respect to the dramatis personæ; Kenyon had married, and ceased to dine at ordinaries before either Law or Scott had quitted their respective universities. The parties were not even acquainted with each other when young men. Alas! for the authenticity of anecdote.

action." He proved the amount from the Speaker's warrant, his signature, and the vote from an examined copy of the Journals of the House. Upon this, Lord Kenyon exclaimed, in his short dry way, "Is there any defence?" Mr. Tooke coolly took a pinch of snuff, and commenced a speech of nearly two hours duration, with informing the jury "that there were only three efficient and necessary parties—the plaintiff himself, the defendant, and you, gentlemen of the jury. The judge and the crier of the court attend alike in their respective situations, and they are paid by us for their attendance; we pay them well; they are hired to be the assistants and reporters, but they are not, and they never were intended to be, the controllers of our conduct." Mr. Tooke was proceeding to give a history of the election of 1788, and its ruinous expense,—that Lords of the Treasury were expected to pay 200*l.* each, persons in superior situations 300*l.*,—when Lord Kenyon interrupted him. "Mr. Horne Tooke, I cannot sit in this place to hear great names and persons in high situations calumniated and vilified; persons who are not in this cause; persons who are absent, and who cannot defend themselves. A court of justice is not a place for calumny; it can answer no purpose; you must see the impropriety of it; and it does not become the feelings of an honourable man."

Defendant.—"Sir, if you please, we will settle this question between us now in the outset, that I may not be liable to any more interruptions from you."

Lord Kenyon.—"Lord Lovat produced the names of persons of great respectability, and he was stopped in the House of Lords. It was said it was indecent to do it, and that it became a man of his station to refrain from such things."

Defendant.—"I am persuaded I shall be able, very easily and very shortly, to satisfy you that I am not in the wrong path, and it is the more necessary that I should do so now, because it is the path which I most certainly mean to pursue, and will not be diverted from. You know, at least you ought to know, and I acknowledge, that if, under the pretence of a defence in this cause, I say under the pretence of a defence, I shall wantonly and maliciously say or do any word or thing

which would be punishable by the laws of the land if said or done by me wantonly and maliciously anywhere else, in the street, upon any other or no occasion, gratis, I shall be equally liable to prosecution and punishment by the same laws, and in the same manner, for what I shall say or do here. But, Sir, you have made use of some words, which I am willing to believe you used in a manner different from their usual acceptation. You spoke of calumniating and vilifying; those words usually include the notion of falsehood. Now I imagine you did not mean them so to be understood, or to insinuate by them your evidence to the jury that I had said what was false, but that by calumny you only meant things injurious to the characters of the persons spoken of, such things as would hurt them to hear, whether true or false."

Lord Kenyon.—"Certainly."

Defendant.—"Well, I thought so; and you see I was not desirous to take advantage of the words to impute to you any other meaning or intention; because, had you meant otherwise, and included the notion of falsehood in the word calumny, your lordship would then have calumniated me. For I have spoken nothing but the truth, as I believe you know, and which I am able and willing to prove. In one thing which has fallen from you I go farther, and am stricter than you are. I think it hard that any persons, either in a cause or out of a cause, should at any time unnecessarily hear what is unpleasant to them, though true. I mean to do nothing of the kind. At my peril I shall proceed, and expect to meet with no farther interruption from your lordship."—*He did not.*

Mr. Tooke then proceeded to lay before the jury what he dearly loved—a startling and patent paradox. "I do not believe the dependence of the judges on the crown was so great formerly as at present. I believe the judges then were less dependent on the crown and more dependent on the people than they are at this hour. The judges then sat on the bench, knowing they might be turned down again to plead as common advocates at the bar, and indeed it was no unusual thing in those days to see a counsel at the bar brow-beaten and bullied by a chief justice on the bench, who

in a short time after was to change places with the counsel, and to receive himself the same treatment from the other in his turn; and character and reputation were of more consequence to the judges then than they are now. They are now completely and for ever independent of the people, and have every thing to hope for for themselves and families from the crown." Mr. Tooke then sneered at the profession from which he was himself excluded; remarking, with the benevolent object of mortifying the Chief Justice, that the brilliant apprenticeship to a peerage was to carry a bag in Westminster Hall; and that the observation of some particular individual being suddenly flush of money, who was never known to have any before, has led to a certain detection of the thief. He then told a long story of a prosecution of his against some rioters in the Westminster election being dismissed for want of a prosecutor, his counsel not having entered court till soon after nine, when Mr. Garrow interposed, and related the real facts. Mr. Tooke continued, with his usual cool assurance, "There can be no doubt at all but that your lordship will always find some one in your own court willing and ready to get up and recommend himself to your favour by a speech in your defence, and I should have been much surprised if it had not been the case now. I am not sorry for it, for Mr. Garrow has given me time to breathe a little." Lord Kenyon exclaimed angrily, "I want no defence. What has been said against me rather deserves my compassion. I do not carry about me any recollection of it, or any of its circumstances." The defendant resumed with a sardonic smile, the only approach to merriment he ever allowed himself: "I cannot say that I *carry about me* any thing in consequence of it. I carry about me something less by all the money which it took out of my pocket. Mr. Garrow has risen up to interrupt me and to deny the fact. Most certainly the fact did pass as I have stated it. I heard him with much pleasure, for I wanted breath. When we have a very different House of Commons from the present, which will consist of the real representatives of the people, of whom if I shall happen to be one, I pledge myself now, that I will in my place in such house, call you to a proper

account, my lord, for your conduct that day, and Mr. Garrow may reserve his justification and defence of your lordship's conduct till that time, when you will want it." With this threat, and a strong injunction to the jury, that they must "well and truly try" the cause, Tooke sat down. Lord Kenyon summed up with contemptuous brevity. "Gentlemen, you are bound by your oath, well and truly to try this cause as stated on the record, and the question in issue between the parties is this: Whether, by the law of the land, the defendant is bound to the plaintiff in this cause in the sum of 198*l.* 2*s.* 2*d.* If a man refuse to pay the costs of a petition, voted frivolous and vexatious, when taxed as directed by the act, he may be brought before a court of justice. If you are satisfied on your oaths that this has been done on this occasion, then you will well and truly have tried this cause by finding a verdict for the plaintiff." The jury so found, but only after an interval of four hours and twenty minutes.

In these skirmishes of carte and tierce, the Chief Justice encountered hardy men, who loved the sport, had rather the best of the fray, and sustained no injustice. A more numerous class, however, suffered beneath his asperities without an opportunity of retaliation or reply. Indignant at the sharp practice to which some prowling attornies in the Bail Court, or at the Old Bailey, might be prone, he extended to the whole body that angry suspicion, which should have been restricted with a guarded discretion to the cases of delinquent individuals, and involved a liberal profession, comprehending all varieties of character, in a sweeping and indiscriminate censure. His jealousy was ever on the watch. When a naval officer had been arrested at a ball, Lord Kenyon said, if he could be sure that the attorney had done this for the purpose of insulting him, he was not certain that he ought to remain on the rolls of the court. The attorney for the prosecution having sent a written paper to the grand jury, stating the law on a case concerning which they were assembled to find or reject the bill, a proceeding not without precedent, and which only showed excess of zeal, the Chief Justice recommended an

indictment to be preferred against him. In other cases this severity found surer ground to rest on, and wrought much good. That he might put an end to sham pleas, he commanded the attornies to attend and state to the court their reasons for giving such instructions. One morning, when none of the parties were ready at Guildhall, he earnestly recommended the several clients to bring actions against their professional advisers; and, on trying the next insurance case, entreated the merchants not to stand so much on sea worthiness. "He was very sorry such conundrums were started, because he was sure they would meet with nursing fathers and nursing mothers." When some paltry trial on a wager had been concluded, he turned sternly to the plaintiff's attorney, "Do not bring me actions on bets, sir, but look out for more reputable business." "His hatred of dishonest practices," says the author of 'My Cotemporaries,' "had lit up a flame of indignation in his breast, but it was an ignis fatuus which led him into error. He gave too easy credit to accusation, and formed an opinion before he suffered his judgment to cool. He decided when under the influence of a heated temper, and often punished with unreflecting severity. The effect of this intemperate mode of administering justice, my memory recals with painful recollection in the case of a Mr. Lawless, an attorney, and an honourable member of that profession. He was involved in the general and groundless prescription of the day. Complaint was made to the court against him for some imputed misconduct, grounded on an affidavit, which the event proved was a mass of falsehood and misrepresentation; but it being on oath, and the charges serious, it was thought sufficient to entitle the party applying to a rule to show cause, why Mr. Lawless should not answer the matters of the affidavit. He could have no opportunity of answering them till he was served with the rule, and had obtained copies of the affidavits on which it was granted. Natural justice would point out, and the practice of the court was conformable to it, that he should be heard in answer to them before he was convicted. For that purpose a day is given by the rule on which the party is to show cause, during which time every thing is considered as suspended. This

indulgence was refused to Mr. Lawless, though the rule was obtained on an ex parte statement, before any opportunity was afforded him to answer the charges, or to be heard in his defence. Lord Kenyon, in addition to the common form of the court's assent to the application, which is in these words, addressed to the counsel: 'Take a rule to show cause;' added, 'And let Mr. Lawless be suspended from practising until the rule is disposed of.' He happened to be present in court when this unexampled judgment was pronounced, and heard the sentence which led to his ruin; he rose in a state of most bitter agitation: 'My lord, I entreat you to recall that judgment; the charge is wholly unfounded; suspension will lead to my ruin; I have eighty causes now in my office.' What was Lord Kenyon's reply to this supplicatory appeal to him! 'So much the worse for your clients, who have employed such a man! You shall remain suspended until the court decides on the rule.' The rule came on to be heard at a future day, after the affidavits on the part of Mr. Lawless had been filed. The charges against him were found to be wholly without foundation, and the rule was accordingly discharged. Mr. Lawless was in consequence restored to his profession, but not to his character or peace of mind. He sunk under the unmerited disgrace, and died of a broken heart."

It may be fairly suspected that there is great exaggeration in this narrative; but even after making every allowance for a highly-coloured statement, we see reason to regret such unguarded precipitancy, and cannot wonder that a judge so irritable and hasty should have been unpopular within the pale of the profession. But however much the deficiency of a calm and courteous bearing impaired his reputation among the practitioners in his court, and rendered him less acceptable to his yoke-fellows on the bench, never was a judge in higher fame with gentlemen of the press, and gentlemen of the jury. His very failings won their liking; his prejudices were theirs; they, with him, loved to detect some knavish trick in an attorney; with him they held in pious horror the fashionable vices of the great, and the faults in his addresses against taste and correct idiom were beauties in

their ears. His reverence for the trial by jury bordered on idolatry; his sentiments never rose very far above the dead level of theirs. They went with him heartily in his addresses, and perhaps the annals of Nisi Prius can furnish no example of a judge so invariably winning the verdict of a jury. His small shot always told; he never fired above their heads, but, to borrow a favourite saying of his own, "hit the bird in the eye." In actions for criminal conversation, for instance, on the enormity of which the exemplary judge felt strongly, their feelings were kindled by his summing up into a contagious fever, which inflamed the verdicts to sums of 10,000*l.* and 5,000*l.* Even in such flagrant cases as those of Lord Valentia v. Gawler and Duberley v. Gunning, both of which disclosed circumstances of manifest and disgraceful collusion, the jurors lavished compensation by thousands, where nominal damages would have been more than sufficient. Lord Kenyon stood prominently forward as a censor morum, a guardian of the morals no less than the laws of this country, whose especial duty it was, to lash the fashionable vices of the day, and punish the delinquencies of the great. "I had not been long in a court of justice," he observed, in the melancholy case of Howard v. Bingham, "before I felt that I should best discharge my duty to the public by making the law of the land subservient to the laws of religion and morality; and therefore, in various cases that have come before me, when I saw a considerable degree of guilt, I have pressed the judgment of juries to go along with me, in enforcing the sanction of religion and morality, by the heavy penalties of the law; and I have found juries co-operate with me in trying how far the immorality of a libertine age would be corrected, by letting all parties know that they best consult their own interest by discharging those duties they owed to God and society."

The number of actions for the breach of these duties increased in a manner that proved rather the cupidity of individuals, than the profligacy of general manners, and tended only to incite the indignant Chief Justice to more strenuous exertions. "His endeavours," he confessed, after an experience of some years, "to deter men from the enor-

mous crime of adultery had proved ineffectual hitherto. But judges and juries were appointed to redress private and public wrongs; they were the guardians of the morals of the people, and ought never to relax in their efforts to prevent the commission of crimes, which struck at the root of private happiness, of religion, and the well-being of society." In his usual peroration "he insisted on the probability that the defendant was able to pay large damages; but if he was not, would they, the guardians of the public, suffer the adulterer to go free? He advised the jury to give ample damages, not for the sake of putting their hands deep in defendants' pockets, but that the vice might be suppressed. The country looked up to them." The twelve delighted guardians responded in general with such alacrity to the call thus made upon their patriotism, that, according to honest Mingay, they not only put their hands, but common sense, in their breeches' pockets. Once, when they whispered together on a damaging fact being elicited in cross examination that the lady painted, Lord Kenyon told them "they should not mind that—that was common. Besides, the defendant (General Gunning) was an abominable, hoary, degraded creature." In the excess of his moral zeal, he overstepped the principles of law on which this action is founded, laying it down as a general rule that two things were to be attended to; first, to give a satisfaction to the party injured, as far as money can be any satisfaction for such an injury; and secondly (here lay the error), that it ought not to slip out of the minds of juries, in administering justice, that they ought to set some example to the public, which might be conducive to public virtue. "There was a time," he added, "in the history of this country, when the laws of the Puritans, which were mixed with a great deal of virtue, if I mistake not, subjected this offence to the punishment of death. I do not look forward to a punishment so severe; but I wish some personal punishment were attached to those, who inflict so dreadful, so incurable, a wound on the peace of private families." Against the legal doctrine contained in these propositions, Lord Eldon resolutely protested. In a case of seduction at Bristol, he stated, that "he gladly laid hold of that opportunity of

disburdening his mind of an opinion that had long laid heavily upon him, as it was in direct opposition to the judgment of one of the most learned judges and best of men that ever sat in Westminster Hall—a man to whom the laws of this country, and (what was of greater consequence even than the laws, because without them the laws would soon prove of little efficacy) the morals of the nation were as much indebted as to any man among the living or the dead. But having paid this tribute to truth, he was bound by his oath to give his own opinion, which was this—that in a civil action of this nature, the jury were bound by law to consider, in awarding the amount of damages, not what might be an adequate punishment to the defendant for his criminality, but what would be sufficient compensation to the plaintiff for the injury." Another misdirection of the Chief Justice was corrected by Lord Alvanley, who ruled, in opposition to him, that the infidelity or misconduct of the husband could never be set up in bar as a legal defence to the adultery of the wife. These instances stand out as rare exceptions to Lord Kenyon's general accuracy, but on such subjects the feelings of the moralist subdued the lawyer's discipline.

With equal energy he exerted the vindictive power of his court to put down the dangerous spirit of gambling, which infected with its taint and leaven the fashionable classes of society. In his most blunt and emphatic manner, he protested that the higher ranks should not find themselves too great for the law, and added a threat, which must have made the purlieus of St. James's tremble, that "if any prosecutions were fairly brought before him, and the guilty parties convicted, whatever might be their rank or station in the country, though they were the first ladies in the land, they should certainly exhibit themselves in the pillory." "There must be something defective in the education of the nobility," he remarked, with a bitter sneer, "when they have to come to this court to finis hit. An unfortunate young man in Newgate had last night sent him a list of the names of those to whom he had lost money, and he was extremely sorry to see among them the name of one person of rank. He would almost wish that the keepers of E. O. tables could be branded

in their foreheads." His severity was so decided, that when a rule was moved for, to stay proceedings in an action brought to recover penalties under the statute for money lost at play, a sum amounting to 1,300,000*l.*, on the ground that the declaration contained 480 counts, consisted of between two and three thousand sheets, and measured in length upwards of 100 yards, the court refused to interfere and check so vexatious and oppressive a proceeding. The bitterness of the judge's invectives called forth some angry letters from General Fitzpatrick, who could not endure that their select clique should be classed with the pickpockets of the Strand. But the straight-forward Chief Justice disdained to capitulate with the world of fashion, and would neither mollify his language, nor be deterred from the prosecution of an honest purpose.

Nor were his efforts less vigorous to correct the murderous crime of duelling, in which the engrossing love of intrigue and fondness for play too frequently found their termination. He declared that whoever was convicted of having murdered his fellow-creature in a duel should suffer the course of the law; and on more than one occasion he directed the jury with inflexible justice to that conclusion, at which their clemency, false and pernicious in general, shrunk from arriving. He knew that the law of England did not recognize the possibility of one man deliberately slaying another without malice being of necessity implied, and his rectitude was too severe, his firmness too intrepid, to permit of his mis-stating the law or deserting his duty. "It has been the fashion," he said, with most praiseworthy firmness, "for some few years last past for men who call themselves men of honour, by braving in this instance the laws of their country,—it has been fashionable for gentlemen of great character and of exalted station, to advertise as seconds what had passed in affairs of this kind. It would be extremely well if those gentlemen would look to the possible, nay, I would say, probable consequences of such conduct. They at least furnish evidence which, perhaps, hereafter may decide on their own lives. It seems to me they yet remain to be informed of a most clear proposition of law, viz., that if men will coolly

and deliberately go out on errands of this kind, accompanied by their seconds, and death ensues, beyond all controversy they are all involved in the crime of murder. Beyond all contradiction all the parties are murderers, and a judge who should fritter away the law in such a case would but ill deserve to continue on the seat of justice."

Notwithstanding his favour with the journalists, Lord Kenyon applied the lash most vigorously to the flagitious libellers, who seasoned their paragraphs with scandal, that they might suit the pampered appetite of the day. His predecessor scourged them with rods, and he with scorpions. But determined as he was to punish the authors of calumnious falsehoods, the audacity of their inventors more than equalled his firmness. So much inferior in spirit are the periodical writers of the present generation to the past, that we look with astonishment at the extravagant boldness, with which the reporters for newspapers could invent the most cruel and groundless aspersions on rank and beauty and innocence, without the slightest foundation in fact, for the mere sordid object of creating a sensation, and increasing the sale. One of the most remarkable of these cases was an action brought by the Countess Dowager of Cavan, as prochein amie for her daughter Lady Elizabeth Lambert, v. Tattersall, the proprietor of the Morning Post, for a series of libels inserted in that paper, to the effect that "a beautiful young lady of quality had made a faux pas with a gentleman of the shoulder-knot, and eloped with her footman." It was admitted at the trial, that the young lady was of the most irreproachable character, had never displayed the least sign of levity, but had always been the pride and joy of her friends. Lord Kenyon felt naturally indignant at the display of such wanton infamy, and resolved that the defendant should suffer a severe retribution. "It is seriously to be lamented," he said, "that the very many causes which are brought, some of them civil and some criminal, should have no effect on persons who publish newspapers, to stop the progress of this which every body complains of. If it is to be stopped, it is to be stopped by the discretion, good sense, and fortitude of juries. It is to you, and you only, that this lady can look for redress, and

it is not her cause only that has been this day pleaded before you; it is the cause of injured innocence spread from one end of the kingdom to the other; and therefore if this lady is not to be protected, nay, if ordinary damages are to be given, and not such as shall render it perilous for men to proceed in this way, we are in an unpleasant situation indeed, and particularly so, when we have heard it openly avowed in court by the vendors and publishers of papers, that their papers were not suited to the public taste, unless they put capsicum in them,—unless they were seasoned with abuse. I do not believe that in all the cases of libel that ever were canvassed, one so criminal as this is to be met with; for here malevolence and malignity have been pursuing this unoffending infant through the course of several months. You, gentlemen, are bound to guard the feelings of this injured lady; and what the feelings of injured innocence are, every one must feel, who is not an apostate from virtue and innocence himself. You, gentlemen, will, before you give your damages, put yourselves into the situation of this injured lady, asking yourselves if those, whom you are most bound by the laws of nature and of God to protect, had been assaulted in a similar manner, what damages you would have expected from a jury of your country; you will think on that, and form this conclusion, that those damages which in that case ought to prevail, will prevail in this case." The jury awarded 4000*l.*, and every one felt that they had not given one farthing too much, for every right-minded man saw the necessity of dealing a death-blow to those sordid traffickers in slander, whose

> "Back-wounding calumny
> The whitest virtue strikes."

Of a more questionable propriety was the court's making absolute a criminal information against the proprietor of another newspaper for a libel, which, compared with the preceding, seems innocent and innoxius, and to which we may find many parallels among the "best possible instructors,"—such is the sounding phrase,—of our days. "The printers are much perplexed about the likeness of the devil. To obviate this difficulty concerning his infernal majesty, the humorous Peter Pindar has recommended to his friend Opie the

countenance of Lord Lonsdale." Mr. Erskine, in showing cause, displayed much wit and ingenuity; prefacing with the argument, that the writer made no malicious insinuation, for that he did not recommend him to be painted with horns. Lord Kenyon hastily interrupted him: "The tongue of malice has never said that." The counsel admitted the truth of his lordship's observation, and contended that this was not a libel on Lord Lonsdale, it was a libel on the devil. 'But that great personage could not come there for redress, because it was a maxim in that court, that those who apply to it should come with clean hands. The countenance of Lord Lonsdale, to be likened to the devil, was a very high compliment, His lordship fell very far short of the devil in appearance, and ought to think himself highly flattered by the comparison. He (Mr. Erskine) would give Fuseli or Opie one hundred guineas for a likeness of himself, resembling the description of his infernal majesty in Milton,—

> "He above the rest,
> In shape and gesture proudly eminent,
> Stood like a tower; his form had not yet lost
> All its original brightness, nor appeared
> Less than Archangel ruined, and th' excess
> Of glory obscured."

The noble lord should not complain that his countenance was compared to a much more beautiful one than his own. The devil was handsomer than Lord Lonsdale, even in masquerade. In his address to Eve, "pleasing was his shape, and lovely." He was handsomer, it appeared, in his domino, than Lord Lonsdale.' Mr. Erskine then seriously contended that this paragraph was nothing but pure innocent pleasantry, and much below the gravity of the bench to notice. The other judges seemed to think, with much appearance of reason, that the plaintiff might be left to bring his action; but Lord Kenyon had made up his mind that no quarter should be given, in the fierce war which then raged between courts of justice and the press. He was of opinion, "that they ought to protect the characters of individuals from ridicule and contempt. The court had laid down rules, from which they should not depart, nor were they to be led away

by the brilliancy and imagination of an advocate. That the paragraph was calculated to bring ridicule on the high character who complained, was proved by the speech of defendant's counsel." The puisné judges acquiesced in the reasoning of their chief, and the rule was made absolute.

On those political libels, also, which tended to convulse the peace of society, Lord Kenyon leaned heavily with all the loins of the law. The punishments awarded at his dictation to seditious language, oral or written, are justified only by the peculiar circumstances of the times, which, unless incitements to turbulence had been repressed by a strong arm, might have brought down on this country the civil horrors which desolated France. Thus, one Frost, an attorney, convicted of saying at a coffee-house, "I am for equality; I see no reason why one man should be greater than another; I would have no king; the constitution of this kingdom is a bad one," was sentenced to be struck off the rolls, to be imprisoned six months in Newgate, to stand once in the pillory, and to find securities for good behaviour for five years. In 1796, Kyd Wake, being found guilty of having insulted the king in his passage to and from parliament, by hissing and crying out "No George; no war!" was sentenced to be imprisoned five years, and to stand in the pillory. When Mr. Stone was acquitted of the charge of treason, in holding correspondence with France, an unanimous shout was set up in the hall, and a Mr. Thompson being seen to join, was immediately ordered into custody. He apologized, by saying that his feelings on the joyful occasion were such, that if he had not given utterance to them, he must have died on the spot. Lord Kenyon replied, it was his duty to suppress such tumultuous joy, which drew contempt on the dignity of the court, and fined him 20*l*. When Chief Justice of Chester, he had inflicted the same penalty on a gentleman, who clapped his hands at some inflammatory passage in Erskine's oration. The spirit of disaffection, then rife in the country, called for marked displays of severity; and through evil report and good report the Chief Justice persevered in an exhibition of firmness, which produced the happiest effects. For his conduct in two trials of this description, those of Reeve

and Gilbert Wakefield, he was exposed to much obloquy; in the first, for leaning too strongly in favour of, and in the last, against the defendant. The first was an information exhibited ex officio by the Attorney-General, in pursuance of an address presented to his Majesty by the House of Commons, for the following unguarded passages in a loyal pamphlet: "In fine, the government of England is a monarchy; the monarch is the ancient stock, from which have sprung, those goodly branches of the legislature, the lords and commons, that at the same time give ornament to the tree, and afford shelter to those who seek protection under it. But these are still only branches, and derive their origin and their nutriment from their common parent; they may be lopped off, and the tree is a tree still; shorn indeed of its honours, but not, like them, cast into the fire. The kingly government may go on in all its functions, without lords and commons: it has heretofore done so for years together, and in our times it does so during every recess of parliament; but, without the king; his parliament is no more. The king, therefore, alone it is, who necessarily subsists without change or diminution, and from him alone we unceasingly derive the protection of law and government." "Should these branches be lopped off," said the Attorney-General, Sir John Scott, "the tree may be a tree still, the king may be a king, but the king will not be a British king."

Lord Kenyon rightly thought that the power of the crown had diminished and was diminishing too rapidly, for any constitutional lawyer to apprehend danger from an undue and excessive upholding of the royal prerogative. He told the jury that this was not the first prosecution instituted by the House of Commons. "In the case of The King and Stockdale it was so instituted. The jury judged of the case, not because the House of Commons had judged of it, adopting their ideas that the pamphlet was a libel and punishable, but they assumed to themselves the right to judge of it by themselves: they asserted that right finally, and in that case certainly they declared the party, whom the House of Commons accused, to be not guilty. Upon the trial of that cause, it was stated to them most ably and most eloquently, that in

proceeding to form their opinion upon it, they were not to select a single expression unexplained by the context, and unaccompanied by the whole of the book, and for that reason to impute guilt to the party accused. They were advised (as I shall presently advise you) to take the book along with them, to consider the whole candidly, fairly, and impartially, and, from a due consideration of the whole, extract what their judgment ought to be on the passage to which delinquency was imputed." The jury acquitted Mr. Reeve, but owing to the determination of one of their number, found that the pamphlet was a very improper publication.

On the writings of the Rev. G. Wakefield, who has been well described as *'a vir clarissimus grafted on the crab stock of a Jacobin dissenter', a man who carried into the science both of grammar and of politics a spirit of insolent dogmatism and precipitate innovation, Lord Kenyon put a less favourable construction, for, instead of presenting the dreamy extravagances of a theorist, which in these days could produce no practical mischief, they teemed with that pernicious spirit of democratic change, by which so large a portion of the people were borne headlong. One of the most violent paragraphs was the following:—"I regard (to use great plainness of speech) your archbishops, bishops, deacons, canons, prebendaries, and all the muster-roll of ecclesiastical aristocracy, as the despicable trumpery of priestcraft and superstition, and a grievous domination over the meek principles of evangelical sobriety." His long confinement in Dorchester Gaol, and the fatal illness that it induced, have created a sympathy for this reverend agitator which, from the character of his writings, he would otherwise never have acquired. But the conduct of his judges is thus eloquently vindicated by the liberal Sir James Mackintosh:—"I could not read Gilbert Wakefield's Memoirs without observing the injustice sometimes done unavoidably to statesmen and magistrates. There never was an age or a nation, in which Gilbert Wakefield's pamphlet would not have been thought punishable. There is no quotable writer for the liberty of the press, who

* Quarterly Review.

would not allow that it was so; yet, when his literature and his sufferings are presented to the mind, long after the offence has ceased to be remembered, or when it is considered only as part of the uninteresting political controversies of a former period, sympathy for him, and indignation against those who punished him, are sure to be excited. But let the pamphlet be read; let the terrible danger of the kingdom be remembered, and let a dispassionate reader determine whether Mr. Somers would not have prosecuted, if he had then been attorney-general, and whether Mr. Locke, if he had been one of the jury, would have hesitated to convict."*

Fired with a spirit of rival eloquence to that which Mr. Wakefield had prodigally lavished, as he himself confessed, on a sullen judge and a yawning jury, the learned lord launched into a strain, which Quintilian would scarcely have commended. "I beg leave to say that I see no good in what has lately taken place in the affairs of another country. I see no good in the murder of an innocent monarch. I see no good in the massacre of tens of thousands of the subjects of that innocent monarch. I see no good in the abolition of Christianity. I see no good in the depredations made upon commercial property. I see no good in the overthrow and utter ruin of whole kingdoms, states, and countries. I see no good in the destruction of the state of a noble, brave, and virtuous people, that of Switzerland. The general right to the liberty of the press is neither more nor less than this, that a man may publish any thing which twelve of his countrymen think is not blameable, but that he ought to be punished, if he publishes that which is blameable. This in plain common sense is the substance of all that has been said on the subject. If you think that it is possible to keep government together with such publications passing through the hands of the people, you will say so by your verdict, and pronounce that this is not a libel; but in my opinion that would be the way to shake all law, all morality, all order, and all religion in society." For the edification of the revolutionary scholar, Lord Kenyon cited the not very novel

* Life of Sir James Mackintosh.

axiom—"Ingenuas didicisse," &c., and declared his regret that the moral should have proved false with regard to him.

This addiction to classical, or rather to Latin, quotation, in one who could lay but slight claim to scholarship, must arrest the notice of all who read his judgments, and was no less singular than unhappy. In a defective acquaintance with the learned languages, he had the precedent of some of his most distinguished predecessors. It is recorded of Sir Matthew Hale, that, in translating Cornelius Nepos, he rendered "elatus est in lecticulâ," he was lifted up in his bed. Lord Hardwicke, in the House of Lords, repeating the phrase "pendente bello," was interrupted by Lord Carteret in a tone of classical indignation, "'Flagrante bello,' my lord! you mean 'flagrante bello!'" Sir Matthew Raymond, in excuse for some unfortunate solecism, made the grave apology that lawyers were not bound to the Latin of the classics. Lord Kenyon seems to have had a similar misgiving, when, on the rare occasion of a visit to his court by the learned Dr. Parr, he interrupted Serjeant Hill in one of his most ancient and learned citations, with an excuse, which went to the heart of the pedant, "We dont talk the best Latin in these courts, brother!"* But whether from a shrewd suspicion that there were not in general many Latinists there, sufficiently fresh from Eton and Oxford to detect his barbarisms, or from an idea that nothing could embellish his discourse like a quotation from a dead language, he appears never to have omitted, "in season and out of season," lugging forward a few favourite sentences, without much regard to their appositeness, propriety, or taste. They glitter in his harangues like the glass beads or bits of tin which savages stick upon their rude clothing, and with which they set off some stolen finery. 'He was fond,' we are told, 'of using phrases, which set all classical taste and learning at defiance. He either coined or quoted them from some book, the author of which was unknown or unheard of by any man of letters. He blended in all his speeches these intrusive scraps, and quoted them with merciless profusion

* Field's Recollections of Dr. Parr.

and deplorable want of taste. When he wished to express his opinion that the established rules of practice should not be departed from, it was adorned with the figurative recommendation of the propriety "stare super antiquas vias."

Lord Eldon alludes to this favourite phrase in his diary:—"'Amo stare supra antiquas vias,' was often uttered. When I was made Chief Justice of the Common Pleas, George the Third, on my kissing hands, said to me, 'If you talk Latin when on the bench, let it be more classical than Kenyon's. You had better speak English only than Kenyon's Latin.' Upon my carrying to his Majesty, upon some judge's appointment, the ring, which, previous to his appointment as a judge (upon being made serjeant) he gives the Chancellor to be tendered to his Majesty, the King, upon reading the inscription upon the ring, said, 'This judge may talk Latin. I see he reads Horace.'"

Another pet scrap of learning, "melius est petere fontes quam sectari rivos," left in the background all his other celebrated Latin quotations. It was an ornament which suited every dress, and, like that of the learned lord himself, it was used till it had become threadbare. He would inform the bar, with becoming gravity, "the court will take time to consider this case 'propter difficultatem.'"—"We will look into this act of parliament with eagles' eyes, and compare one clause with another, 'noscitur a sociis.'"—"Go to Chancery," was his address to an importunate suitor, "abi in malam rem." "Taffy," said Lord Thurlow, "when did you first think the Court of Chancery was such a 'mala res?' I remember that you made a very good thing of it. And when did solicitors become so very odious as you now represent them? When you practised in the Court of Chancery they were not such atrocious fellows."

When counsel were disputing sharply in the Dean of St. Asaph's case a piece of evidence,—one of them saying, "we can prove this to be the prosecutor's letter," and the other retorting, "I beg leave to say you cannot, it is not evidence;" his lordship interposed, with a sort of learned charm, "modus in rebus, there must be an end of things." These bits of classicality, sometimes as inapplicable as if

they had been picked up at random from a dictionary of quotations, are amusingly caricatured in that miscellany of legal anecdotes, "Westminster Hall." The learned lord is there represented concluding an elaborate charge to the jury, with the observation, "Having thus discharged your consciences, gentlemen, you may retire to your homes in peace, with the delightful consciousness of having performed your duties well, and may lay your heads upon your pillows and say, 'Aut Cæsar aut nullus.'" On another occasion, his lordship, wishing to illustrate in a strong manner the conclusiveness of some fact, ended by remarking, "It is as plain as the noses on your faces,—'Latet anguis in herbâ!'"

His choice of words in the vernacular was scarcely more judicious, a vulgar phrase or unlucky turn of speech often marring the effect of his most grave sentences. Thus in an action on the case, for administering certain drugs to the plaintiff's wife to make her miscarry, the fact having been elicited that the child was born alive, and died subsequently, Lord Kenyon interfered: "I cannot try it. God forbid I should look forward, but it *blinks* on murder." Declaiming on his own impartiality, he asserted, that he had known Mr. Murphy forty years, and had spent many pleasant hours in his company, but must apply to him the same rules as he would to an Indian, a Turk, or a Mahometan. The Judge was so partial to rhetorical ornaments, classical allusions, and metaphorical language, that some of his discourses show faults as glaring as the composition of a fashionable auctioneer. When sitting in the Rolls Court, indignant at the conduct of one of the parties, who had tried every artifice to gain time, the master astonished his staid and prosaical audience by exclaiming, "This is the last hair in the tail of procrastination!" Whether he plucked it out or not, the reporter has omitted to inform us. The Term Reports, when they use the very language of the chief, often contain a series of broken metaphors. For example:—"If an individual can *break down* any of those safeguards, which the constitution has so wisely and so cautiously erected, by *poisoning* the minds of the jury at a time when they are called upon to decide, he will *stab* the administration of justice in its most

vital parts." But to the admiration of a wondering jury, the Chief Justice delighted even more in allusions to the Roman history and to Scripture than in figures of rhetoric. "It was urged that the defendant was a young man amid scenes of gaiety. The example of Scipio might have been fresh in his memory, (if indeed he had ever heard of him,) 'Scipio et juvenis, et cœlebs et victor;' and if the lady was a spinster, so was also the princess of Spain!" and again, "Duties of imperfect obligation must be left to a man's own feelings. He had frequent occasion to regret that the laws did not enforce them. The debt due from a person educated to a person educating, was one of the strongest and most important that man was capable of. In the most polished periods of the Roman empire, one of its most splendid orators, Pliny, did not think he had discharged his duty to Quintilian by discharging the mere debt due, but felt himself bound to portion out the daughter of a man to whom he owed so much." In an action by one smith against another, for saying that he had charged too much for some iron railing, Lord Kenyon interposed. "Has defendant by his proceedings beat down the profits of the trade?" A.—"He certainly has tried at it." Lord Kenyon.—"These are not the first smiths we have heard of that have been alarmed. We know the history of a silversmith almost 2000 years ago, 'Great is Diana of the Ephesians.'"*

Scholars may suspect that Lord Kenyon would have been less profuse in his illustrations had he been trained at the university, instead of at an attorney's office. Coleridge in his Table Talk has mentioned another of his favourite examples, which displays a felicitous ignorance that the whole race of Malaprops might have envied. "Above all, gentlemen, need I name to you the emperor Julian, who was so celebrated for the practice of every Christian virtue, that he was called Julian the Apostle!" But this story, we believe, is too good to be true. His laughing censors must in candour confess that the learning of the (by courtesy) learned judge was not so shallow as to have made him commit so portentous a

* Trial of Hanson, 1799.

blunder, and the volume of State Trials, in which his speech is given, contains a correct allusion to Julian the Apostate. But unskilfully laid on as these patches of oratorical finery too often were, there are not wanting instances, in which he used a forcible illustration, or applied a striking phrase with great effect. On one occasion he was required to afford information, respecting the fees and emoluments of his court, to a committee of the House of Commons. Mr. Abbot (afterwards Lord Colchester) was the chairman, who himself held an inferior office in the King's Bench. The patience of the Chief Justice having been exhausted by a series of questions too nearly touching that delicate subject, the perquisites of his office, he began to demur to any further interrogatory. Mr. Abbot, assuming what he intended to be a high and commanding attitude, pompously enough informed his lordship that he was armed with the authority of the Commons House of Parliament. "Sir," was the pithy reply of the Chief Justice, "I will not be yelped at by my own turnspit."* On a trial before him at Nisi Prius, some usher at a boarding-school having confessed in cross-examination that he had enclosed a letter to a boy in the school, with the initials of a young lady, the learned judge expressed the most lively displeasure. The witness inquired, with much pertness, what there was particular in the letter? Lord Kenyon retorted by calling instantly to the usher, "Turn the minion out of court!"

This strong moral feeling,—the utter indignation manifested by him at every thing base and immoral, embodying its ideas in language full of muscular vigour, now and then produced an electrical effect, which the most consummate orator might have envied. No trick of art or finished elegance could at times compete with his plain manly sense, and energetic, but often vulgar, English, in swaying the minds of the audience. His *style* was of bone, not ivory, but he wielded it with power, and compensated by his impassioned tone the defects of an ungraceful delivery. He was in the habit of hurrying his words together in such a manner that his articulation became

* Wicken's Division of the Law.

occasionally very indistinct. He lisped, hesitated, and stammered, when not under the influence of powerful emotion; but where he felt strongly he spoke strongly, and compelled assent to his doctrines. Several of the preceding extracts—and we might select many equally favourable—will lead a fair critic to the conclusion, that his excellence in the art of persuasion fully compensated his sins against good taste, the more especially, when he considers the description of persons, to whom his harangues were addressed.

A very characteristic specimen of his judicial oratory is presented in the case of Doe dem. Stevenson v. Walker, which, as it involved the sanity of the testatrix, and her capacity to execute a will, interested his feelings deeply. Mr. Stevenson, the legatee, had brought an ejectment against the heir-at-law to recover certain premises at Romford, in Essex. It appeared that in 1786, Mrs. Mary Robinson, a lady seventy-six years of age, of considerable fortune, died, leaving a will, by which, with the exception of a few legacies, her whole property was devised to Elizabeth Bodkin, her waiting-maid, and one Stevenson, a fruit merchant, whose son soon after married Bodkin. An action had been brought by Mr. Walker, the heir-at-law, in the Common Pleas, and with the approbation of Lord Eldon the jury declared the will to be void. Mr. Stevenson was dissatisfied with this verdict, and brought the present ejectment. Erskine led for the plaintiff, and Law for the defendant. Fourteen years had elapsed since the making of the will. Two of the three witnesses to it were dead. The third came forward to declare that the testatrix was, from intoxication, incapable of making a will. The man had carried a show-box, after being expelled from the attorney's office, with whom he witnessed the execution of the will, and was subpœnaed for the heir-at-law. Several attorneys were called to speak to the good character of the subscribing attorney and his clerk, and to their signatures. A dissenting minister stated that he never saw Mrs. Robinson intoxicated, that the signature resembled her handwriting, and that she had stated to him, her relations should not have her property. Two warrants of attorney, which the testatrix had executed to the plaintiff, were then

put in and read, dated the very month after the execution of the will. For the defence Mr. Law called Cooperson, the surviving witness, who deposed that the names of the attorney Gale, and his fellow clerk, were written before he came into the room. "Mr. Gale guided the hand of testatrix. She appeared to him stupid drunk. He had mentioned to all the masters he had since lived with, that the will was not properly executed. It was near twelve at night when he signed." Mr. Law also called the apothecary, who swore that Mrs. Robinson had the appearance of a woman who drank; a witness, who had taken a legacy of one hundred pounds under the will, and yet did not believe the signature to be her handwriting; several witnesses, who believed Cooperson to be an honest man, and the masters with whom he subsequently lived, who all declared that he mentioned to them the circumstances of this will, and said all was not right respecting it.

After a reply from Erskine, Lord Kenyon summed up.

"This was as anxious a cause as he had been witness to. Mankind were deluded and deceived, if the legislature told them they might make wills, and dispose of their property, and when they had done so the law was not to take effect. It was the balm of the human mind to think that after men had acquired a fortune by their honest industry, they would leave it to those who were most worthy, or at least to those for whom they had the tenderest affection. If they were disappointed in that, *the great and main pursuit of man in society* was disappointed. As to the verdict given in the other court, he was disposed, as he was bound in duty to do, to treat it with great respect, because it was riveted in his mind, that no man could bring his case before a jury more fit to decide it, than before the merchants of the city of London. He had said so often, he had thought so always; and it was his firm opinion, never to be erased from his mind, that if he were to look round among all the judges who sat in judgment in this country, the noble lord who tried this cause in the other court, Lord Eldon, would certainly in his opinion stand in the first rank. He could notwithstanding not doubt. The day of debate is deferred till two of the witnesses are

removed by the hand of God out of this sublunary life, and when that is done, the only subscribing witness now living, totally unknown to Mr. Walker, is met by him as he was walking up to Hampstead, with a show-box on his back, who asked him his name, and then, having learned his name, by the most fortunate coincidence of circumstances that ever happened, he takes him aside; 'hinc origo mali,'—a plot of gigantic villainy is hatched. The objections to this will were without form and void. Was the will executed? There had been judges who immediately rejected the testimony of witnesses who wished to invalidate their own act. They have said, We will not hear such a witness. There was a very great judge, whose name was never to be mentioned without honour, who died in 1737, Sir Joseph Jekyll, who tried a cause of this sort at Chester. He thought, on the whole, it was better to hear them. He received the witnesses, as tradition stated, at Chester Assizes; they swore against the will, and yet the will was supported. There was another case of the same sort tried before another judge in more modern times, Mr. Jolliffe's case. The three subscribing witnesses were called, and they all with one voice swore against the will. The jury found a verdict in favour of the will. The witnesses were afterwards indicted for perjury, and all found guilty. Two of the witnesses were not here to answer for themselves, but they were not men before whom a curtain was drawn, and who had an opportunity of shutting themselves up from the observance of the world; but they lived in the face of the world, and lived by their characters, and they went down to the grave without their characters being impeached. He had a right to consider them as giving their testimony; he had a right to consider them as standing in the witness-box giving their evidence, since their characters had been supported by evidence so respectable. Their character was only impeached by the testimony of one witness, who had come that day to contradict, on his oath, that which he solemnly attested at a former period of his life. If this will were to be set aside, what man could be comfortable or happy? Who could rest his head on his pillow, and say, 'I have looked to the right hand and to the left; I have settled all my worldly

affairs; I am now happy. I have disposed of my property, and have distributed it among those objects, that are the most worthy and dearest to me.' He would distrust the evidence of a man, whose testimony contradicted the act he had done in a former period of his life. If a person executed a will in articulo mortis, there might be more danger of imposition. But this lady made her will near twenty-two months before her death. Would it be asked, 'Will you disinherit the next of kin?' That would depend on circumstances. Many had actually done it, and some with vast applause. An Earl of Lincoln, who thought he could not consistently with his character and his honour support the measures of a minister, gave up his situation, and lost his pension. This conduct was so much admired by Lord Torrington that he left him his whole fortune, though he did not know the noble lord, and all the world were ready to clap their hands at the act. If this will should be doubted, it will invite people to discuss every will in a court of justice. The case is in hands where justice will be done. If there is room to pause, you will pause; but if the case is clearer than the sun, you will deliver your sentiments on it by the verdict you will give."

The jury immediately found a verdict for the plaintiff; and set the mind of the judge at ease by securing those rights of property which he so highly valued. In guarding these rights against fraud or violence, and enforcing the rigours of the penal code, this chief criminal judge of England trusted too much to the effects of terror. To use his own words, 'he thought it very dreadful that men of business should be robbed by those they employed,' and he inflicted death as the most terrible, and therefore the most preventive, punishment. Not that he was a cruel or sanguinary man; could he have consulted his own feelings he would have borne a bloodless ermine, but he thought that his duty to the country required the passing of that sentence, the most dread and painful part of the judicial office, which, at whatever cost to his feelings, the magistrate must perform. The number of capital convictions and executions on his circuits have been adduced to prove that he exercised a more mer-

ciful discretion than many of his brother judges, who appear to have inverted the celebrated saying of Wilkes, and to have resolved that, "the best possible use to which you can put a criminal is to hang him." Wilberforce makes a note of his gratification at finding how favourable the Chief Justice was to penitentiaries, and to a less sanguinary system of penal laws.

An interesting anecdote of Lord Kenyon's sensibility was related in the House of Commons by Mr. Morris in the debates of 1811. Of the occurrence that gentleman had been an eye-witness. "On the Home circuit," he said, "some years since a young woman was tried for having stolen to the amount of forty shillings in a dwelling house. It was her first offence, and was attended with many circumstances of extenuation. The prosecutor appeared, as he stated, from a sense of duty; the witnesses very reluctantly gave their evidence, and the jury still more reluctantly their verdict of guilty. The judge passed sentence of death; she instantly fell lifeless at the bar. Lord Kenyon, whose sensibility was not impaired by the sad duties of his office, cried out in great agitation from the bench: 'I don't mean to hang you: will nobody tell her I don't mean to hang her?' I then felt," he justly added, "as I now feel, that this was passing sentence, not on the prisoner, but on the law." This deserved reproach never startled the learned judge, who was a devout believer in the perfection of the penal laws, and, without rising superior to the prejudices of the age in which he lived, gained a reputation for mercy above his colleagues, by yielding more frequently than they did to the impulses of compassion. His humanity, active in cases of life and death, so far as his conscience would allow, was less alert in behalf of those criminals to whom secondary punishments had been awarded, and never slumbered so soundly, as when a fashionable libertine was to be amerced in damages, a seditious libeller to be sent to gaol, or a knavish attorney to be struck off the rolls.

CHAPTER III.

THE LIFE OF LORD KENYON — *continued.*

In behalf of poor offenders, ignorant and deluded, the tools of more knavish men, the humane sympathies of Lord Kenyon were often forcibly excited. We find a remarkable instance of this in the case of Spence, where his pity for the sorry state of the defendant subdued, in a great degree, the inveterate displeasure which he felt against his crime. He was tried for a publication steeped in sedition of the worst kind. "We must destroy all private property in land. The landholders are like a warlike enemy quartered upon us for the sake of raising contributions, therefore any thing short of a total destruction of the power of these Sampsons will not do; and that must be accomplished, not by simple shaving, which leaves the roots of their strength to grow again: no! we must scalp them, or else they will soon recover, and pull our temple of liberty about our ears." The man excited compassion at his trial by his wretched appearance, and the pitiable fanaticism with which he was possessed, for he was honest. He called himself in his defence 'the unfeed advocate of the disinherited race of Adam.' When brought up for judgment, he gave the following simple statement of his treatment in Newgate *: —

"Perhaps, my lords, I have entertained too high an opinion of human nature, for I do not find mankind very grateful clients. I have very small encouragement indeed to rush into a prison, on various accounts; for in the first place the people without treat me with the contempt due to a lunatic, and the people within treat me as bad or worse than the most notorious felon among them; and what with redeeming and ransoming my toes from being pulled off with a string while in bed, and paying heavy and manifold fees,

* Southey's Essays.

there is no getting through the various impositions." He was sentenced to a fine of 20*l.* and one year's imprisonment in Shrewsbury Gaol; a sentence so lenient (compared with cotemporary sentences in other cases of the sort) as to show that the individual was very properly regarded by Lord Kenyon with compassion. He invariably shielded the working and poorer classes from oppression, when wily informers sought to harass them with the rigours of the law. The late Mr. Wilberforce used to tell what pleasure he had felt at the indignation evinced by the honest Chief Justice, when, in the course of a prosecution against a man for exercising the trade of a tailor, without having served an apprenticeship, it appeared that other prosecutions were pending against him for several acts done in the same day. "Prosecute the man," exclaimed Lord Kenyon, "for different acts in one day! Why not sue for penalties on every stitch!" On another occasion, when a tradesman was assailed with litigious prosecution for not having completed an apprenticeship of seven years under the 5th of Elizabeth, Lord Kenyon observed, 'that the ink was scarcely dry with which the statute was drawn, when the legislature repented of it;" and he put the impolicy and hardship of the proceeding so forcibly to the counsel that he consented for very shame to abandon the prosecution.

There was one class of criminal cases, that of blasphemy, the trial of which, from the judge's strong religious feelings, exacerbated them to excess. In their progress, the violent struggle between the indignation of the man, and his wish to preserve the impassive temperament proper for his office, became often painfully manifest. Blame has been imputed to him for his vacillation in the trial of Williams the bookseller. A more dignified firmness and undisturbed equanimity might perhaps be desiderated; but the narrative of his conduct carries its own apology with it, and the candid explanation he afterwards made, enhances, rather than detracts from, his judicial character. The following is a short history of the case.

A bookseller was tried before him for blasphemy in publishing Paine's Age of Reason. On the clerk proceeding

to read some of the passages set out in the indictment, Mr. Garrow said, "My lord, I really think we might spare the court and jury the pain of hearing this read;" and Lord Kenyon replied quickly, "To me, who am a Christian, to be sure, it is shocking, perfectly shocking." The passage was not read. The fact of publication being proved, Mr. Kyd, counsel for the defendant, proceeded to comment on the Bible. "With respect to the instances of cruel and torturous executions, and unrelenting vindictiveness, I do not feel myself restrained by any feeling of modesty from reading them, and, therefore, I will give you them at full length." He was proceeding to read some passages in Genesis, when Lord Kenyon interposed: "I do not know how far I ought to sit here, and suffer a gentleman at the bar to bring forward parts of the Bible in this way;" but, on the prompting of some King's Counsel, the Judge told Kyd to cite the passages, which he did. Mr. Kyd afterwards volunteering to show the weakness of some answer in the Apology of the Bishop of Llandaff, Lord Kenyon again interposed: "I cannot sit in this place and hear this kind of discussion." Mr. Kyd retorted: "My lord, I stand here on the privilege of an advocate in an English court of justice; this man has applied to me to defend him: I have undertaken his defence; and I have often heard your lordship declare, that every man had a right to be defended. I know no other mode, by which I can seriously defend him against this charge, than that which I am now pursuing; if your lordship wish to prevent me from pursuing it, you may as well tell me to abandon my duty to my client at once." The judge's querulous "Go on, sir," was the sole further interruption which the spirited but injudicious advocate met with, and he took undoubtedly a full revenge. Afterwards when Williams was brought up for judgment, Lord Kenyon said, "Upon reflecting on my conduct during the trial, I have reason to accuse myself of improper conduct for permitting such arguments to be used; for, if I remember the conduct of the court in causes of this nature, I should have remembered the opinion of the whole court in the case of Rex v. Woolston, 2 Strange, 834. The court would not

endure, would not suffer, any thing to be said against the established religion of the country. The order and decorum of the court, which has been observed in almost every instance through my long professional life, has guarded against any thing of that kind; it has been protected by the decorum of the bar. It is impossible for the court to foresee, when a sentence begins, how it will end, and sometimes mischief is done, before we are sure that the sentence will conclude in an offensive manner. I must say this, to show that I ought not to have suffered what was spoken upon the trial, in some parts of the defence." *

In his character of a lawyer, Lord Kenyon is entitled to draw freely on the national gratitude, with the full assurance (to carry out our mercantile metaphor) that his draft will not be dishonoured. As a lawyer, he must ever command the admiration of the profession, the praise of his fellow-citizens, and the respect of posterity. As a lawyer, he need not vail the head to the best and wisest of the many wise and good who have filled the bench, and may even stand a comparison with his immediate predecessor — the great Lord Mansfield. In other respects, vast indeed was the superiority of that noble judge, who rejoiced in a commanding presence, and enjoyed all the advantages which a noble figure and graceful action could impart, spoke as through a silver trumpet (so perfect was the harmony of his voice), and caught at will the very word he wanted, which was always the best. Lord Kenyon, on the contrary, appears to have been absolutely rude and deficient in all that attracts the eye and ear; had an inelegant, snuffling mode of speech, accompanied by a hesitating manner, which never approached elegance, and interwove his diction with a motley patch-work of figures, similar to what the wits of Queen Elizabeth's day used to term soraismus or mingle-mangle. The one adorned his arguments with classical illustrations, and occasionally with passages from the Latin historians and poets, not foisted in, but introduced with aptitude and good taste; the other interpolated his bits of quotation after the following inartificial

* Trial of Williams in 1797.

fashion: — "The allegation is as far from the truth 'as old Bolerium from the Northern Main,' a line I have heard or met with Gods know wheer" (his mode of pronouncing where). To all his judgments the sneer of Carteret against Lord Hardwicke is applicable: "You might see in every line the blunt pen of the old attorney!' He always failed in what the Americans call the eloquential line; whilst his predecessor was so triumphant in the statement of a case, that, according to one of the first orators of the day, 'it was in itself worth the argument of any other man.' He was almost too persuasive, leading his hearers insensibly to every observation that might favour the conclusion he wished to draw, and diverting every objection, at one time by serious reasoning, at another by delicate raillery; sometimes winning conviction from principle, and at another from authority, but always with such complete success, that he could say, in the great case of literary property, Miller v. Taylor*, when he had presided nineteen years: "This is the first instance of a final difference of opinion in this court since I sat here. Every order, rule, judgment, has hitherto been unanimous." His successor, when he found a difference of opinion, which was far less rare in his court, would rather rail than argue. The first ruled the King's Bench with an aristocratic air and gentlemanly bearing, which subdued even the party prejudice of Dunning, and won over the reluctant homage of Serjeant Glyn; the latter wielded the rod as sternly as the despot transformed into a pedagogue may be supposed to have done over his little school at Syracuse. Scorning all soft compliances and arts of conciliation, he swayed the fiery spirits of his court with all the rigour of a tyrant, but with an honest determination of purpose which compelled obedience, though often paid with a smile. Thus when the rival leaders, Erskine and Mingay, were in high debate, Lord Kenyon settled the controversy in his own rough way: — "This is a contest, gentlemen, for victory, and not for justice; but I have made up my mind, and will not be moved from it, though assailed by rudeness on the one hand, and by flattery

* 4 Burrough, 2403.

on the other." So far the comparison appears to be entirely in favour of the elder judge. A profound knowledge of, and a stubborn adherence to, the common law, saved his successor from the mortifying sense of inferiority, and placed him as a sound expositor of the common and statute law of England on the same lofty eminence. The diligence of each was equally meritorious. Lord Mansfield told one of his guests, who expressed surprise at seeing him poring over some special case: "While the company is at cards, I play my rubbers at this work: not the pleasantest in the world; but what must be done, I love to do, and have it over." "I do not give you credit," writes Wilberforce to Stephen, "for the same innate love of law, which made Kenyon bring home cases to be answered, as another man would crack walnuts, when sitting tête-à-tête with Lady Kenyon after dinner." * Her laborious lord surpassed even Lord Mansfield's assiduity in the hunting up of cases, for he had no literary tastes to gratify—no company to divert his attention—and the work of law had become to him the very pleasantest in the world. In his determination to administer the common and statute law in full integrity, always unbending, often ungracious, he dealt out its decrees with the precision and certainty of some intellectual machine wrought of iron, which was never bent to particular justice, and could never be warped or turned aside by notions of equity.

Lord Mansfield, the artificer of our commercial law, a dexterous architect in the law of evidence, versed in all legal principles, and familiar with all forms and precedents, could not escape the imputation of insincerity and vacillation; and sometimes, as in the Douglas case, laid himself open to the charge, that the conviction of his hearers was not on the same side with their admiration; that his mode of reasoning was not uniform, but shifted and varied at pleasure. "My dear Garrick," he once observed, "a judge on the bench is now and then in your whimsical situation between tragedy and comedy: inclination drawing one way, and a long string of precedents the other." He suffered himself now and then to

* Wilberforce's Correspondence.

be led away by his inclination, and, standing on such high vantage-ground, to make too light of authority. The dangerous praise of his admirers, that he made the rigid rules of practice often subservient to purposes of substantial justice, that he softened the rigour of the law by the interposition of principles of equity, that he made the law work itself pure by rules drawn from the fountain of justice, and that he would not suffer justice to be strangled in the nets of form, however pretty and metaphorical in its phraseology, alarmed, and not without cause, the jealous fears of Serjeant Hill and the old black-letter lawyers, and exposed him to the indignant irony of Fearne, "that his enlarged and more enlightened style of doctrine was not suited to the narrow strictness of preceding times." Fortunately for the common law, Lord Kenyon reverted to that strictness, and thus forcibly expressed his determination to keep distinct the metes and bounds of the two branches.* "I have been in this profession more than forty years, and have practised both in courts of law and equity, and if it had fallen to my lot to form a system of jurisprudence, whether or not I should have thought it advisable to establish different courts with different jurisdictions and governed by different rules, it is not necessary to say; but, influenced as I am by certain prejudices that have become inveterate with those who comply with the systems they found established, I find that in these courts, proceeding by different rules, a certain combined system of jurisprudence has been framed most beneficial to the people of this country, and which, I hope I may be indulged in supposing, has never yet been equalled in any other country on earth. Our courts of law only consider legal rights; our courts of equity have other rules, by which they sometimes supersede strict legal rules, and in so doing they act most beneficially for the subject." Accordingly, he determined that no action lies for a legacy. "The very judges who determined that it did, had more than a doubt on their minds afterwards. And it is highly convenient and beneficial that courts of equity should have the sole jurisdiction in those cases. Those courts make

* 7 Term Reports, 667.

provision for children, infants, married women, and according to the particular circumstances of the case; whereas a court of law can only proceed according to the strict rules of law, without at all consulting the convenience of the parties." On the same principles, in the Mayor of Southampton v. Graves*, pending an action by a corporation, the court would not grant leave to inspect the muniments on application of defendant, a stranger to the corporation. "This inspection had been conceded by Lord Mansfield, on the ground that it would be granted, of course, by filing a bill in chancery for a disclosure—a mistaken opinion—and would avoid expense. It confounded the jurisdiction of courts of law and equity. A court of equity knows its own province; it will examine into cases of this kind when the application is made, and adapt its rules to the individual case, in the manner best calculated to attain the ends of justice. But if this court is to grant an inspection of title-deeds, it must be a general rule framed to embrace all cases, and not a particular rule for a stranger prowling into other men's rights." In the same spirit of guarded caution, he expressed himself averse to any theories, however specious, which might tend to overrule precedents long established, and militate with former decisions. He thought it better for the general administration of justice, that an inconvenience should sometimes fall on an individual, than that the whole system of law should be overturned, and endless uncertainty be introduced. "I should be sorry to see one decision," he said, "on the Annuity Act in 1798, and a different decision on the same act in 1801." And again in Shawe v. Felton, 2 East, 114: "It is of little consequence to inquire what my opinion would have been on the subject of valued policies in the year 1746, immediately after the statute 19 George the Second passed; for, very soon after, they were decided to be legal by as cautious and upright and painstaking a judge as ever presided in this court, Chief Justice Lee, and have been sanctioned since by one uniform course of decisions. All this is now supposed to be wrong, and the rules by which this and other commercial nations have so

* 8 Term Reports, 590.

long regulated their dealings are now wished to be disturbed; but I will not lend my aid to open such a new and wide door of litigation. I am not one who wish *quieta movere*."

The same principle guides and governs his judgment in several other cases. "I refer to Rex v. Bellringer*, not because I pay a greater deference to the judgment given in this court since I have been here, but because it is the latest decision, and was founded on principles established in the times of our predecessors. I will not overturn the law of the land as it has been handed down to me." He set his face as a rock against a practice which had become prevalent, of permitting solemn and well-weighed decisions to be assailed by modern speculative reasoning, and would not allow the plain words of a statute to be refined away, however severe in its enactments, by any subtle sophistry. "The arguments that have been pressed upon us might have some effect if they were addressed to the legislature, but we are sitting in a court of law, and must administer justice according to the known laws of the land. Let application be made to the legislature to amend the act; as long as it remains in the statute book we must enforce it. We must not by any whimsical conceits, supposed to be adapted to the altering fashions of the times, overturn the established law of the land; it descended to us as a sacred charge, and it is our duty to preserve it."

This respect, amounting almost to a reverential awe, might perhaps have lapsed into idolatry, had it not been controlled and regulated by his strong common sense. We fancy, however, that we may detect a portion of excessive scrupulousness shadowing his excellent judgment, when he for a long time hesitated whether or not he should allow a Scotch member of the kirk to be sworn holding up his hand, instead of kissing the book, though the witness persisted that such was the form most binding on his conscience. He did at length, not without reluctance, concede the privilege, and the precedent, with the sound reason for it, has been adopted by his successors. Fettered by the authority of Chief Justice

* 8 Term Reports, 410.

Holt, he determined that he would try a silly wager, "whether one Susannah Tye had or had not bought a waggon," though the more vigorous and daring intellect of Buller burst the meshes of precedent, in which his chief was bound. "To attempt," he said, "to put an end to innocent wagers, however the court might wish it, was assuming the provinces of the legislature. The discretion of a judge had justly been called the power of a tyrant; but Mr. Justice Buller anticipated the decision of later times, that their adjudication on such subjects degraded the dignity and wasted the time of the court." After one of Mr. Justice Buller's subtle judgments against the legality of all wagers touching the person or transactions of another, Lord Kenyon would say, "If we were sitting here in a legislative capacity it might perhaps be prudent to declare that no wagers whatever ought to be allowed, but it is our duty jus dicere, non jus dare; we can only pronounce what the law is, and if there be any defect in it, the legislature above is competent to remedy it." The same acute colleague having refined too much, that the wager was void by the statute of George the Second, Lord Kenyon said, "I cannot but think that act relates wholly to policies of insurance; and, as my brother Grose has said, it would be strongly distorting the meaning of words to suppose that such a wager as the present could be within the meaning of the legislature." The respect of this cautious Chief Justice to the decisions long established of his predecessors was extreme. "I cannot," he would say, "I cannot set up my judgment against the opinions of Lord Holt and Lord Hardwicke; I yield to the weight of the authorities, but not to the reasoning of them." Lord Kenyon would not, any more than preceding judges, permit comparison of handwritings to be evidence in civil or criminal cases, alleging as a reason the argument, which every year tends to render more feeble, that if it were permissible to compare handwriting, the situation of a jury, who could neither read nor write, would be strange and deplorable. There are no such common juries to be met with now, except perchance in the mines of Cornwall, or marches of North Wales. A sound legal understanding, however, and sense of sterling honesty, prevented the Chief Justice from yielding too

implicitly or too frequently to antiquated authorities and obsolete precedent. He laid down the just proposition, that "technical rules are to be attended to, and in some cases cannot be dispensed with, but that, in administering justice, we must not lose sight of common sense. Acting on this maxim, when the Master of the Rolls sent a case for the opinion of the Court, he said, "I believe there is no instance in which the judges of the King's Bench ever certified their opinion in a case sent here from the Master of the Rolls. It has been refused, but I think it was an idle formality; and I shall feel no reluctance in certifying in such cases, because I think it is convenient to the suitors of that court." This sound sense served the Chief Justice in good stead when any action came upon him by surprise at Nisi Prius. In Astley v. Harrison, Peake, 256, the proprietor of a theatre brought his action against a critic for a libel on one of his performers: "That the defendant, contriving to terrify and deter a certain public singer, called Gertrude Elizabeth Mara, who had been retained by the plaintiff to sing publicly for him, wrote and published a certain false and malicious paper writing, (the declaration set out the libel,) by reason whereof the said Mara could not sing without great danger of being assaulted, ill-treated, and abused, and terrified, deterred, and hindered from so singing; and that the profits of the amusement were therefore rendered much less than they otherwise would have been." Madame was called as a witness, and said she did not choose to expose herself to contempt again, and therefore refused to sing. Lord Kenyon stopped the defendant's counsel. "The injury is much too remote to be the foundation of an action. If this can be maintained, it may equally be supported against every man who circulates the glass too freely and intoxicates an actor, by which he is rendered incapable of performing his part on the stage. If any injury has happened, it was occasioned entirely by the vain fears or caprice of the actress. This action is to depend, forsooth, on the nerves of Madame Mara." To the sifting of causes this just judge applied also another principle, equally stringent,—the principle of honesty. By this common measure, applicable to all transactions between man

and man, he was accustomed to test extravagant bills brought against infants, debts incurred at the gambling table, usurious contracts and exactions in every shape and form. Where a stock jobber sought to juggle a clergyman out of 3000 pounds stock, by showing that their agreement was regulated by statute 7 Geo. II., Lord Kenyon expressed his lively indignation. "Before we assented to this monstrous proposition, we would look with eagles' eyes into every part of the statute to see that such was the intention of the legislature. The act is entitled, 'An Act to prevent the Infamous Practice of Stock-jobbing;' but if the defendant's objection were to prevail, the title of the act ought to be altered, and it should run thus, 'An Act to encourage the wickedness of stock-jobbers, and to give them the exclusive privilege of cheating the rest of mankind.'" He strongly reprobated the practice of an owner clandestinely bidding at an auction for his own goods. "They who are not lawyers agree with me that it is a fraud on the sale and the public. Lord Mansfield decided this, and on the noblest of all principles, to preserve honesty between man and man. It was happy for the public that, by this decision, his capacious mind had quashed an enormous system of fraud, and had made a precedent which his successor was very proud to follow." Where a plaintiff (Upsdell v. Stewart, Peake, 255) brought assumpsit for work and labour, as surveyor, for measuring the work and settling the bills, and charged five per cent. on all the money paid, and his counsel offered to prove that it was the uniform custom of surveyors to charge five per cent. on all money allowed to the workmen, one half the demand, two and a half per cent., having been paid into court, Lord Kenyon stopped the cause: "The plaintiff states his demand to be as much as he reasonably deserves to have for his work and labour. Does he reasonably deserve to have this exorbitant demand? As to the custom offered to be proved, the course of robbery on Bagshot Heath might as well be proved in a court of justice. It ought not to be and cannot be supported." The counsel consented to a nonsuit.

Even in those cases where his prejudices disposed the learned lord to lean harshly against defendants, such as

actions for breach of promise of marriage, he would not countenance any oblique and tricking conduct. A lady having had repeated promises, and fearing her lover's fickleness, procured two young women to listen to a conversation, in which she put the question home, "When do you mean to marry me?" The lover answered off-hand, "I will marry you as soon as I return from Nottingham." Lord Kenyon did not approve of this clever trepanning; and the jury, influenced by his displeasure at the stratagem, and wishing to deter others from a similar artifice, found for the defendant. The court refused a new trial, on the ground that the promise should have been made in a solemn manner, and not swindled out of him in desultory talk. After solemn argument in banc, though often found judicially to decide in opposition to his wishes, most gladly would the Chief Justice embrace the first occasion that offered, when he could pronounce his judgment on principles of honesty as well as of law. Most energetically would he then declare, that to solicit a servant to steal his master's goods was a misdemeanour, though no act be done.* "The offence imputed to this defendant, is of the most serious kind; no less than that, for his own wicked gains, he solicited and incited a servant to rob his master; and can it be a question, in a country professing to have laws subservient to justice and morality, whether this be an offence? It would be a slander on the law to suppose that an offence of such magnitude is not indictable."

This desire to square the law with what all understand, the rules of common sense and common honesty, regulated however and controlled by a degree of cautious hearing, which none but lawyers could appreciate, rendered the Chief Justice a decided favourite with the main body of suitors, and the public. To maintain this favour by no unworthy methods, but by a diligent discharge of his professional duty, and the patient explanation of all points which they might not fully understand, was the object of his earnest ambition. He held it to be the great duty of every court of justice to administer justice as well as they could between the litigating

* R. v. Higgins, 2 East, 5.

parties; another, and not less material duty, was to satisfy those parties that the whole case had been examined and considered. It was with a view to the latter of these duties, he said, and not on account of any doubt on the subject, that arguments were sometimes heard a second time. So anxious was Lord Kenyon on this subject, that in a case where a jury had awarded excessive damages against the Earl of Dorchester in an action of trespass for diverting a water-course, and the court were unanimous in granting a new trial, he declared, that he hoped, on behalf of the court, he might make an appeal to the public, and that a conclusion would not be drawn from their decision, that equal justice was not administered to the king's subjects. "It was their duty to hold the scales of justice even between parties, and not to listen to the calls of the rich, in preference to the rights of the poor. The court seldom found it necessary to make solemn appeals of this kind, except where, as in the present instance, those who composed a part of a crowded audience, and who might not fully understand the question, might possibly draw an unfavourable conclusion from the decision of the court being given in favour of a rich man. This case had been tried by a most respectable special jury, who had nothing in view but to do equal justice between the parties; but still, if the court could not perceive on what principle they gave the 3000*l.*, or even the half of it, it was proper to send it to another jury. There ought always to be some proportion between the damage given for a civil injury to property, and the value of that property."

In his excessive respect for juries, which was somewhat tinged with adulation, Lord Kenyon occasionally broke this sensible and easily understood principle. Thus, in Duberley v. Gunning, 4 Term Reports, 655, where a jury had given an injured husband 5000*l.* compensation, he refused a new trial, on the ground of excessive damages, though he admitted that the husband's conduct bordered on vice, and confessed that he should have been satisfied if nominal damages only had been given. "I confess," he said, "although I feel great difficulties on the one side, as well as the other, I have not courage enough to make the first precedent of granting new

trials under such circumstances as the present." Mr. Justice Buller had more courage, as the sum awarded was enormously disproportionate, and his judgment has received the sanction of later authorities. In a hard action, Lord Kenyon would intend any presumption in favour of the verdict of the jury, when consonant with the real justice of the case, citing as an authority an instance almost bordering on the ludicrous, where, in an action on the game laws, it was suggested, "that the gun which defendant fired was not charged with shot, but that the bird might have died in consequence of the fright; and the jury having given a verdict for defendant, the court refused to grant a new trial."

This deference to the popular voice, however honest and well-meaning, sometimes betrayed the Chief Justice into error. Of this, we have a striking instance in his enforcing the laws of regrating and forestalling in times of dearth. At the close of the last century, an ignorance of the real cause of the extreme dearness of the price of provisions in proportion to the scarcity, as well as of the remedial preceedings which the scarcity required, was endangering the public peace. Malthus found himself called upon to protect middle-men and cornfactors against mobs and magistrates, and declared that the populour clamour, headed by the Lord Chief Justice, must make every reflecting mind tremble for the future supply of our markets. "If it is pleasant," writes Sydney Smith, "to notice the intellectual growth of an individual, it is still more pleasant to see the public growing wiser. This absurdity of attributing the high price of corn to the combinations of farmers was the common nonsense talked in the days of my youth. I remember when ten judges out of twelve laid down this doctrine in their charges to the various grand juries on the circuits."

But before finally condemning, we ought to listen to the defence of our amateur political economist, the more especially as it was in such favour with the popular journals of the day, that they recommended the clergy to read it from the pulpit to their respective congregations. It is given at length by Peake, in his Nisi Prius Reports, in the case of Rex v. Rusby, p. 189.

23625

"It frequently becomes the duty of juries in this place to decide causes where the interests of individuals are deeply concerned; but a more important duty than is imposed on them to-day they never fulfilled. This cause presents itself to their notice on behalf of all ranks, rich and poor, but more especially the latter. Though in a state of society some must have greater luxuries and comforts than others, yet all should have the necessaries of life; and if the poor cannot exist, in vain may the rich look for happiness or prosperity. The legislature is never so well employed as when they look to the interests of those who are at a distance from them in the ranks of society. It is their duty to do so; religion calls for it; humanity calls for it; and if there are hearts who are not awake to either of those feelings, their own interests would dictate it. The law has not been disputed; for though, in an evil hour, all the statutes, which had been existing above a century, were at one blow repealed, yet, thank God, the provisions of the common law were not destroyed. The common law, though not to be found in the written records of the realm, yet has been long well known. It is coeval with civilized society itself, and was formed from time to time by the wisdom of mankind. Even amongst the laws of the Saxons are to be found many wise provisions against forestalling and offences of this kind; and those laws laid the foundation of our common law. That it remains an offence, nobody has controverted; the only question which has been made in this cause is, whether it has been committed by the present defendant. Speculation has said, that the fear of such an offence is ridiculous; and a very learned man, a good writer, has said, You might as well fear witchcraft. I wish Dr. Adam Smith had lived to hear the evidence of to-day, and then he would have seen whether such an offence exists, and whether it is to be dreaded. If he had been told that cattle and corn were brought to market, and then bought by a man whose purse happened to be longer than his neighbour's, so that the poor man who walks the streets, and earns his daily bread by his daily labour, could get none but through his hands, and at the price he chose to demand; that it had been raised 3*d.*, 6*d.*, 9*d.*, 1*s.*, 2*s.*, and more a quarter on the same day; would he have said there was no danger from such an offence? (Here the judge recapitulated the evidence of the two Smiths.) We are obliged to hear all that witnesses have to say, but it is a canticle of courts of justice that witnesses *non numerentur sed ponderentur*, they are not to be numbered but weighed. It is the nature of the human mind, it is the perfection of the human heart, to serve a friend in distress; but in doing

so a man should not transgress the higher calls of religion and morality—the obligations of an oath. We are not monks and recluses, as was said in another place, but come from a class in society that, I hope and believe, gives us opportunities of seeing as much of the world, and that has as much virtue amongst its members, as any other, however elevated. The defendant's interest was concerned in the second sale; and I cannot believe witnesses when they say he did not concur in it. It has been said, that in one county,—I will not name it,—a rich man has placed his emissaries to buy up all the butter coming to the market; if such a fact does exist, and the poor of that neighbourhood cannot get the necessaries of life, the event of your verdict may be highly useful to the public."

The jury leapt to his conclusion, and unfortunate speculators paid for their temerity, both in person and in purse.

Lord Kenyon rarely ventured out of the four corners of the record to discuss subjects connected with literature or the fine arts. Northcote, in his Conversations, gives an account of a trial about an engraving, where he, West, and others, had to appear, and of the respect that was shown them. On the president of the academy being called, there was immediately a line made for him to come forward, and a perfect stillness. The judge addressed him: "Sir Benjamin, we shall be glad to hear your opinion." Mr. West answered he had never received the honour of a title from his Majesty, and proceeded to explain the difference between the two engravings, which were charged with being copies, the one of the other, with such clearness and knowledge of the art, though he was in general a bad speaker, that Lord Kenyon said, when he had done, "I suppose, gentlemen, you are perfectly satisfied. I perceive there is much more in this than I had any idea of; and am sorry I did not make it more my study when I was young."

O'Keefe records his gratitude for Lord Kenyon's interposing to protect him, when exposed to laughter in court for some silly writing. Colman had brought an action against the manager of the Richmond theatre for performing the play of the "Agreeable Surprise," without permission, and called O'Keefe as a witness. "Mr. Law, the counsel for defendant, took the music-book in his hand and read, in a

deep tone of burlesque, the ridiculous burden of one of Lingo's songs: —

"Tag-rag merry derry, perriwig and hatband,
Hic hoc horum genitivo."

'Pray did you write these words, Sir,' inquired Mr. Law gravely. I looked abashed. Lord Kenyon relieved my embarrassment by immediately observing, 'Oh, that is nothing; Shakspeare for his clowns had recourse to the same humorous expedient.'"

Having to try the value of a gem-engraving on an oriental onyx, the judge professed that he had no skill on earth upon the subject. "He had no knowledge whether it was done well or ill. He had not the least conception what the value of it was; and therefore refrained from observations, as they might possibly mislead the jury." On questions connected with the large science of public morals, he exercised less restraint. After deciding in The King v. The Archbishop of York*, that it was a good return to a mandamus commanding the Archbishop to license a clerk to teach in a grammar-school, that he had suspended granting his licence until the party would submit himself to be examined touching his sufficiency in learning, Lord Kenyon continued: "Whoever will examine the state of the grammar-schools in different parts of this kingdom will see to what a lamentable condition most of them are reduced, and would wish that those, who have any superintendence or control over them, had been as circumspect as the Archbishop of York has been on the present occasion. If other persons had equally done their duty, we should not find, as is now the case, empty walls without scholars, and every thing neglected but the receipt of the salaries and emoluments. In some instances that have lately come within my own knowledge, there was not a single scholar in the schools, though there were very large endowments to them."

In this useful spirit of censorship he would comment, as the occasion might arise, on the scandal of Sunday dinner-parties — on the number of foreign servants employed by the great — on fashionable routs and the dissipation of the

* 6 Term Reports, 490.

younger nobility. The freedom of animadversion in which our modern cynic indulged, his ascetic habits and impracticable (such they termed it) code of morals, gave great umbrage to the courtly circle who heard the truth less freely spoken from the lawn sleeves and velvet cushions of the West-end, and who scorned their plebeian censor. In a discussion on the adultery-prevention bill, the Earl of Carlisle retaliated by sneering at his ignorance of life, and terming him in derision a gownsman fresh from the cloisters, a legal monk. The sensitive *censor morum* was prodigiously affronted, and embraced the earliest opportunity of venting his displeasure. "Somebody tells us that the judges are legal monks, that they know nothing of the world. What is the world? It is necessary to define terms in order to know what the world is, and what is meant by this knowledge of the world. If it is to be got by lounging like young men of fashion about Bond-street, or at gaming-tables, or at the course at Newmarket, or in private houses of great men, or in brothels, I disavow being acquainted with it. (Never certainly was disclaimer less needed!) But surely, something of what may be truly called a knowledge of the world, quicquid amant homines, may be contained in courts of justice." We have seen another allusion to this attack in the preceding judgment on some doctrine of political economy. In the ensuing circuit he often dilated upon it in his charges to the grand jurors in the different towns, and was only stopped in the querulous habit by a significant hint that Lord Carlisle intended to complain of it as a breach of privilege in the House of Lords.

Among his brother peers, Lord Kenyon was not seen to advantage; he wanted that dignity of mien and carriage, that ease of temper, and general courtesy of demeanour, which distinguish the proud assembly of nobles more than any heraldic blazonry, the star, the strawberry leaf, or the insignia of their various orders. If they showed themselves inattentive to the technical discussions in which the soul of the learned lord delighted, and which formed the charm of another sphere, he rebuked their indifference with petulance, observing, that, "in case dry legal reasoning and strict

attention to forms of practice, on which substantial justice depended, were unpleasant to their lordships, they had better not call upon lawyers for their opinions, but either send them out of the house, or not suffer them to babble there." The little affection which the legal peer bore to the House of Lords was so much a matter of notoriety, that George the Third said to him with a laugh, on his attending a levee, "You would rather listen to me, I hear, than to the peers." He rarely took part in the debates, except on some change in the law, to defend his own character from attack, or to rate and scold his illustrious audience. He joined Lords Thurlow and Bathurst in entering a protest in the journals against the passing of the Libel Act, which, he said scoffingly, was but a race for popularity; assigning as reasons, "that the rule laid down by the bill, contrary to the determination of the judges, and the unvaried practice of ages, subverted a fundamental and important principle of English jurisprudence, which, leaving to the jury the trial of the fact, reserved to the court the decision of the law. It was truly said by Lord Hardwick, in the Court of King's Bench, that if ever these came to be confounded, it would prove the confusion and destruction of the law of England."

These fears are proved to have been unseasonable and delusive; but they can scarcely wonder at their effect on the minds of even these able lawyers, who remember the eager controversy to which the discussion had given rise, and how pertinaciously the prejudices of the bench had been enlisted against the doctrine. In discussing the law of debtor and creditor, Lord Kenyon would sometimes push the exactions of rigid honesty too far: "The noble lord (Stanhope), had said that persons were imprisoned for sums as low as one shilling; this he could not consider to be an oppression; for if any were so obstinate as to refuse the payment of legal dues, the laws ought to be enforced; on the payment of those dues, however, the persons imprisoned could be released."

The extreme sensibility of the learned law lord was painfully evinced when Lord Moira introduced a bill for the relief of persons imprisoned for small debts. Having occa-

sion to allude to certain vague rumours which implicated the character of the Chief Justice of the King's Bench, Lord Kenyon rose, and with evident agitation said, "That when he came down to the house that day, he did not know whether he should not be dragged to their lordships bar as a criminal. He begged their lordships indulgence, therefore, while he expressed his injured feelings..... Though he was not now upon his oath, he spoke under a sense of duty which he owed both to God and man, and he took that opportunity of solemnly declaring, as he hoped for salvation at the day of judgment from that all-good and beneficent Being to whom he was to answer for his conduct in this life, that every syllable of the accusation was utterly false; that he never had received any profit or emolument from the abuses which had been mentioned, and which, in a letter privately sent to him, were said to be sanctioned by him in his judicial capacity, on account of the profits arising from them,—which he was represented as avariciously sharing with gaolers, turnkeys, and others. Under his present feelings, however, he most earnestly besought—nay, he implored the house to appoint a committee to inquire into his conduct; and he pledged himself to give evidence before that committee of what he had now most solemnly asserted. That in the lower departments of the law there were many bad men, who practised upon the distress and miseries of their fellow-creatures, he knew but too well, and to such men he always opposed himself. He would now proceed to state his objections to the motion. In the first place he laid it down as a principle, quoted from Lord Coke, that credit would be sparingly given where there not the means of enforcing payment of the debt. He insisted that the law of arrest, as it at present prevailed, had conduced in an essential degree to the increase of commerce, and the extension of trade; that if the security it afforded the creditor was weakened, it would produce the most serious consequences. With respect to the delays which had been insisted on, he had assisted juries in the decision of about a thousand causes annually, and had found that the delays, when they did

arise, were advantageous, instead of being injurious, to the debtor."

The committee was of course refused, and the Lords heard in pitying, wondering silence. But though not popular as a member of their body, Lord Kenyon always maintained with much anxiety their due privileges and those of the other house of Parliament. He decided, indeed, in the case Rex on prosecution of Sermon v. Lord Abingdon, 1 Espinasse, 226, that a peer has no right to publish to the world a criminatory statement of any individual, though he has an undoubted right to utter it in his place in Parliament; that his privilege of perfect liberty of speech does not extend beyond the walls of the house. Lord Abingdon had read a speech against his attorney, and then caused it to be printed in several newspapers. He exhibited the novel spectacle of a peer, unassisted by counsel or attorney, appearing to plead his own cause, and demanding, as his privilege of peer of Parliament, the right to sit in court with his hat on, an assumption which the head of the court in no soft language repelled. The decision is now recognized as undoubted law, equally preserving the immunities of the senator, and the rights of the unprivileged subject.

In another judgment (The King v. Wright, 8 Term Reports, p. 293) Lord Kenyon appears to have pushed those privileges to an unwarrantable extent. A rule having been obtained, calling on the defendant (a bookseller) to show cause why a criminal information should not be granted against him for printing and publishing a libel on J. Horne Tooke, his counsel produced an affidavit, in which he stated that the charge on Mr. Horne Tooke was a paragraph contained in the report of the committee of secresy of the House of Commons, a literal copy of which he had published, and that he did not publish the report with a view to calumniate Mr. Horne Tooke. The court called upon the prosecutor to support the rule. The paragraph complained of, and which was contained under the head, "Attempts to assemble a Convention of the People in England," was as follows: "Some of the persons so arrested were prosecuted for high treason.

A grand jury for the county of Middlesex found a bill against Thomas Hardy, the secretary of the London Corresponding Society; and eleven others; three of the persons so indicted, viz. Thomas Hardy, John Horne Tooke, and John Thelwall, were tried, and on their trials were acquitted of the charge in the indictment. But the evidence given on those trials established in the clearest manner the grounds on which the committees of the two Houses of Parliament had founded their reports in 1794, and showed beyond the possibility of doubt, that the views of these persons and their confederates were in their nature completely hostile to the existing government and constitution of this kingdom, and went directly to the subversion of every established and legitimate authority."

Erskine and Warren, in support of the rule, contended that "the House of Commons themselves were not justified in directing or giving a sanction to the publication of this libel on Mr. H. Tooke, beyond an entry on its own journals, or for the use of the members of the house. But even if they possessed such an extraordinary power, the house having, in this instance, only directed an entry on its own journals, and ordered the printing, by their own printer, of as many copies of this report as were sufficient for the use of the members of the house; that did not give the defendant, a stranger, the right of printing and circulating copies of it, so as to furnish him with a legal defence either to an action for damages or to an information or indictment for a libel. The House of Commons were not justified in making the report in question, inasmuch as it reflected on innocent individuals. It is the undoubted right of every subject who is accused of a crime to be tried by a jury of the country; and as it appeared on the former part of this very paragraph, that Mr. H. Tooke had been acquitted by a jury, it was a foul libel on him to say that he was guilty of the crime of which he had been acquitted. In the case of R. v. Sir W. Williams, where an information was filed against the defendant, who had been Speaker of the House of Commons, for publishing a libel—Dangerfield's Narrative—it was determined by this court, that the defendant was not justified in publishing, though he

had published as Speaker and by order of the House of Commons. This determination still remains in force, notwithstanding several attempts in parliament to get rid of it. And Sir Robert Atkyns, in his 'Treatise on the Power, Jurisdiction, and Privilege of Parliament,' vindicates the legality of this determination. This decision, therefore, proves that the House of Commons themselves cannot justify the publishing of any matter reflecting on an innocent individual.

"But even if the House of Commons cannot be called to account for making this report,. they could not sanction the publication of it beyond an entry on its own journals, and printing copies of it for the use of their own members. In the case of Lake v. King, where a petition was presented to a committee of the house for examination of grievances reflecting on the plaintiff's conduct, and the defendant distributed printed copies to the members of the committee, it was not pretended that the defendant could distribute the copies to other persons not members of the house; and this court said, 'That the printing with intent to deliver the copies to members of the committee was justifiable, but if he had delivered them to others it would be otherwise.' Now, in this case the defendant has published copies of this report for general circulation."

Lord Kenyon, without calling on the other side, at once pronounced judgment. "This is an application for leave to file a criminal information against the defendant for publishing a libel; so that the application supposes that this publication is a libel. But the inquiry made by the House of Commons was an inquisition taken by one branch of the legislature, to enable them to proceed further and adopt some regulations for the better government of the country. This report was first made by a committee of the House of Commons, then approved by the house at large, and then communicated to the other house, and it is now sub judice; and yet it is said that this is a libel on the prosecutor. It is impossible for us to admit that the proceeding of either of the Houses of Parliament is a libel, and yet that is to be taken as the foundation of this application. The case of R. v. Sir

W. Williams, which was principally relied upon, happened in the worst of times; but that has no relation to the present case. There the publication was the paper of a private individual; and, under pretence of the sanction of the House of Commons, an individual published; but this is a proceeding by one branch of the legislature, and therefore we cannot inquire into it. I do not say that cases may not be put in which we would not inquire whether or not the House of Commons were justified in any particular measure; if, for instance, they were to send their serjeant-at-arms to arrest a counsel here, who was arguing a case between two individuals, or to grant an injunction to stay the proceedings here in a common action, undoubtedly we should pay no attention to it. But the report in question, being adopted by the house at large, is a proceeding of those who by the constitution are the guardians of the liberties of the subject, and we cannot say that any part of that proceeding is a libel. I am therefore clearly of opinion that this rule ought to be discharged."

Lawrence, J., added:—"It is of advantage to the public, and even to the legislative bodies, that true accounts of their proceedings should be generally circulated, and they would be deprived of that advantage if no person could publish their proceedings without being punished as a libeller." This judgment, important as a grave decision on a great constitutional question, derives at this time an adventitious interest from the opposite doctrine of Lord Denman, and the conflicting opinions of the profession.

While thus retentive of the privilege of the nobility, Lord Kenyon did not forget his own. Having stated opinions not very palatable to some of the peers, his old antagonist, the Earl of Carlisle, threatened to bring the subject under the notice of the house, but before doing so he requested the Lord Chancellor Rosslyn to communicate with the Chief Justice on the subject, urging him to attend in his place and explain. The Chancellor had scarcely hinted the wish, when Lord Kenyon took fire: "Let them but attempt to touch a hair of the head of the Chief Justice of England, and I will soon show them what he is made of."

His opinion was once privately requested by the highest authority on a great constitutional question. The letter and answer, though less liberal than would be expected in the present day, reflect high credit for sincerity and straightforwardness on both writers.* In March 1795, Lord Kenyon must have been startled by the following communication from the king.

"Queen's House, March 7, 1795. The question that has been so improperly patronized by the Lord Lieutenant of Ireland seems to me to militate against the coronation oath, and many existing statutes. I have therefore stated the accompanying queries on paper, to which I desire the Lord Kenyon will, after due consideration, state his opinion, and acquire the sentiments of the Attorney General on this most serious subject."

His reply was forwarded on the following day.

"Lord Kenyon received your Majesty's commands when he was in the country. He came immediately to town, and incloses what has occurred to him on the question. He has conferred with the Attorney General, and believes there is not any difference in opinion between them. They are neither of them apprized what was the extent of the alteration meditated to be made in Ireland.

"Your Majesty's most obliged and dutiful subject,

"KENYON."

The conclusion to be drawn from the enclosed documents, ably reasoned and fully furnished with authority, was, "that so long as the king's supremacy, and the main fabric of the Act of Uniformity, the doctrine, discipline, and government of the church of England, are preserved as the national church, and the provision for its ministers kept as an appropriated fund, it seems that any ease given to sectarists would not militate against the Coronation Oath, or the Act of Union. Though the Test Act appears to be a very wise law, and in point of sound policy not to be departed from, yet it seems that it might be repealed or altered without any breach of the Coronation Oath or Act of Union." George the Third, after a slight interval, sent a further query.

"The King is much pleased with the diligence shown by the Lord Kenyon in answering the questions proposed to him, and

* Dr. Philpott's Letters.

wishes his further opinion on the state of the question in Ireland, as drawn up by a right reverend prelate of that kingdom, and on the petition of the Roman Catholics."

The King's questions were somewhat evasively but tersely answered by the cautious judge. "The petition expresses apprehension of proscription, persecution, and oppression. All grounds of such apprehensions, if such there really are, may be safely removed, if the late benefits, which the petition admits, have not removed them, without endangering the Established Church, or violating the Coronation Oath."

Between the good old sovereign and the Chief Justice there always existed the best possible understanding, for there was much of sterling honesty and stubborn principle in the two characters, which could not but attract them to each other. Lord Kenyon would often take occasion, with more zeal than judgment, to express his loyal feelings. Once, after a warm effusion of attachment, he remarked, "The King might say with Samuel, 'Whose ox have I taken? whose ass have I taken? whom have I defrauded?'" His citation of Scripture is almost as quaintly applicable as that of the old admiral Sir Charles Wager, who, in answer to a question of William III., impatient of his scruples at sailing, "Did you ever hear of a king being drowned?" replied with his usual gravity, "Yes, please your Majesty, Pharaoh, king of Egypt!" *

We must now return with the loyal and worthy judge to his court of King's Bench. We have made several extracts from his judgments, to enable even the unprofessional reader to appreciate their general excellence; but the lawyer alone can fully value them; and the more profound his reading, the more deep will be his admiration. One of the best in our day, Charles Butler, than whom there could not sit in the critic's chair a more competent judge, after praising Lord Kenyon's intuitive readiness, complains that "he seldom exhibited the intermediate patient discussion. The consequence was, that though the decision was right, the ground of it was sometimes obscure, and the objections to it in

* Grainger's Biographical Anecdotes.

the minds of the hearers were not always removed. This lessened the merit of his adjudications, but they are most deservedly held in the highest respect, and considered of the highest authority." * At Nisi Prius he never brought a book with him into court to refer to; a practice not unusual with the other judges on the bench. The extent, as well as the arrangement, of his legal knowledge, required no such assistance. His decisions, though hastily formed, were almost without exception correct, and remain as good law to this day. With such diligence did he pursue his daily labours, that he was often able to get through twenty-five or twenty-six causes, to the entire satisfaction of the court, and (if that were possible) of the suitor. Exactly at nine every morning he would take his wonted seat, extending the time to half-past nine as an especial favour, when the legal corps had to borrow some hours from the morning for the perfecting of their military exercise.

He continued without interruption, instant in season and out of season, at his legal duties, till the Home Summer circuit of 1801, when the startling tidings of the dangerous illness of his eldest son reached him, and he hurried down to Flintshire to sit by the sick bed. His son died, and the fond father could no longer labour with life, for he had gazed into the open tomb of his first-born, and it was large enough for both. After a brief interval, the judge returned to his court, a sorrow-stricken, heart-broken man. At the close of Michaelmas Term he again withdrew into Wales, in the vain attempt to sooth his regret for the loss; Mr. Justice Le Blanc presiding in his stead at the sittings. It must have been a deep and heavy grief which could compel the veteran lawyer to quit his post even for a short period; and though the quiet produced a temporary restoration of health, his strength, shaken by anxiety, was already sinking beneath the weight of years. His life had been one of constant care and labour; he was now tottering to the extreme span, and seeking in vain from inaction the needful repose of health. During Hilary Term, 1802, he was only able to take his

* Butler's Reminiscences.

seat in court for a single day; he was recommended by the physician to try the air of Bath, and migrated there to die. His death was owing to a complete decay of nature. Grief induced an attack of black jaundice; for several weeks he scarcely took any nourishment or had any sleep; still he was subject to little or no pain, and died perfectly composed, resigned, and grateful, the 4th of April 1802, in his seventieth year. He was buried in the family vault at Hanmer, and the long epitaph which commemorates his worth contains more truth than is usual in lapidary inscriptions. No monumental praise could record too fully his piety, probity, and moral worth. "He has left a name," writes the present Lord Kenyon, the inheritor of his goodness, "to which his family will look up with affectionate and honest pride, and which his countrymen will remember with gratitude and veneration, so long as they shall continue duly to estimate the great and united principles of religion, law, and social order. No Welshman," he adds, "ever exhibited more eminently two traits of Cambria-warmth of heart and sincerity of character."

The eulogium pronounced on Sir Leoline Jenkins by his faithful chronicler may be transferred to Lord Kenyon, with as much truth in many of its features, as if he had sat for the portrait. Of whom could it be said, with less fear of contradiction, that "he was a man of excellent piety and unaffected devotion; that he did not use his religion as a cloak to cover or keep him warm, but was early acquainted with religious principles and practices; and through the whole course and tenor of his life was a serious and sincere Christian, of a strong and masculine piety, without any mixture of enthusiasm or superstition?" He was regular in his attendance at the parish church, joined fervently in the responses, staid to partake humbly of the sacrament, and was scrupulous in the performance of his private devotions. Of none could it be affirmed more unreservedly that he was "impartial in the distribution of justice, without respect of persons or opinions; that he was not only just between man and man in all ordinary cases, but also where his intimate friend, his patrons, his enemy, or his own interest interfered;—for, in a word, he seemed to have loved justice

as his life, and the laws as his inheritance, and acted as if he always remembered whose image and commission he bore, and to whom he was accountable for the equity of his decrees." But the resemblance between the two judges appears most striking when we enter the penetralia of private life. "Few vacant spaces," says the biographer of the first judge, "or neglected moments, slipped away from him. He was a man of little leisure, and of no sort of pleasure, even to a voluntary abstinence from innocent and agreeable diversions, and in many things of life exceeded the most rigid stoic. He always lived in a sparing, abstemious way, that he might be best fitted for business and the duties of his employments. As he constantly went to rest early, so he rose early, and often before the sun in the midst of summer, nature exacting very little sleep of him. He was frugal and temperate in the management of his fortune, and was an enemy to all sorts of luxury and extravagance at a time when there was a general encouragement given to it." Lord Kenyon was up at six, and in bed generally at ten, apportioning nearly the whole of the intermediate time to business, for recreation embraced but a scanty measure of the day, and he gave no space whatever to dissipation. He took no zest in the pleasures of the table, preferred the plainest and most simple food, and drank little wine. His joys and cares all radiated homewards; his sense of happiness was thoroughly domestic. He was faithful to his conjugal vows to the extent of being deemed uxorious; and the depth of his affection for his children is but too fatally attested in the last years of his life.

In sanctity of deportment, unspotted integrity, elaborate diligence, and legal erudition, Lord Kenyon may not shrink from comparison with another and greater judge, whose portrait at full length had the place of honor in his dining room at Greddington, the ever memorable Sir Matthew Hale. Like that devout chief justice, he never missed attending church for twenty-six years*; equally with that upright, unswerving lawyer, who owed no man fear or favour, Lord Kenyon was no respecter of persons, and acted on the

* Burnet's Life.

principle that a gift perverteth the ways of judgment. Like his painstaking predecessor, who made the King's Bench an academy for students, he took pride and pleasure in explaining maxims of law from the seat of justice. Even in their foibles each resembled the other. The sight of students in long periwigs, or attornies with swords *, could not have appeared more offensive to Hale, than did all fopperies or fashion of attire in the eyes of Kenyon; nor, when the first received a lecture from Baxter for dressing himself too meanly, did he better deserve reproof than his worthy successor. Each was too ascetic, in his habits, and over studious of thrift. To each might be applied Wordsworth's apostrophe to a heavy shower of rain: —

> "Yet be it always understood,
> You're not so pleasant as you're good."

Each was vir frugi in the sense of the ancient Romans, who made parsimony and probity so inseparable, that the phrase signified a sober and managing man, an honest man, and a man of substance; each was servantissimus æqui.

Of Lord Kenyon's frugal and almost primitive style of living a curious trait has been recorded.† A gentleman, who had sold to that learned lord his house at the Marsh Gate, near Richmond, and where he was wont to pass his Sundays in term, wished to look at his old residence, and was readily admitted by the housekeeper. On the table of the sitting-room he saw some books — the Bible, Epictetus, and the Whole Duty of Man. "They come down here on a Saturday," said the old woman, "and bring a shoulder or leg of mutton with them, which serves for the Sunday dinner." This proof of abstemiousness in the Chief Justice may vie with the story of Andrew Marvel and his cold dinner of yesterday furnishing the day's meal.

The long vacations of the learned lord, "solicitæ solatia vitæ," were usually spent at Greddington, in Flintshire, where he had built a handsome residence, among the friends and scenes of his youth. He was town-bred, and had no relish for field sports, but dabbled a little in farming, took an interest in turnpike meetings and justice business, and gained

* Roger North. † Diary of a Lover of Literature.

the esteem of his neighbours by volunteering to decide their legal doubts and difficulties. No part of North Wales is unprolific in law-suits; and the worthy judge would take a sly pleasure in extinguishing litigation in embryo, and committing the cruel act (such even poachers would deem it) of crushing an attorney in the shell. The honest Welshmen had, it is true, a proper contempt for cheap law; but the judgments of a chief justice, clothed in ermine, won their high regard, and many were the heart-burnings, feuds, and jealousies which he appeased by his zealous arbitration.

Of his anxiety not to damage professional reputation, we have heard an amusing instance. A case on some first principle of law, whether the half-blood could inherit in preference to kin next in degree, had been submitted to a provincial counsel at Chester (the city is more fortunate now in its legal advisers), who pronounced peremptorily in favour of the claim. Mr. Serjeant Hill gave a short but emphatic opinion to the contrary. Lord Kenyon was referred to in this conflict of authorities: "Mr. M——" (naming the country gentleman) "is no doubt a good common lawyer, and in common sense there is great force in what he says; but, without discussing his reasons, I must say brother Hill is right in point of law." Had he caught any unfortunate tyro committing a blunder equally grievous in his own proper domain, within the confines of Westminster Hall, he would have shown the novice little mercy; but it did not accord with his notions of rigid justice to disparage a professional man's reputation, and effectually diminish his practice, when not brought regularly to his cognizance.

We have seen that he was severe to the profession. Instances of kindness are, however, scattered here and there,—little acts of good nature, and right feeling, which form an agreeable relief to the general harshness that pervaded his deportment. The author of that amusing book, the Clubs of London, gives a specimen of Lord Kenyon in his better mood.

"An old coach came rumbling along, and overtook me on the road to London from Richmond. It was one of those

vehicles that reminded me of a duke or marquis under the old régime of France, rivalling in indigence and want the faded finery of his wardrobe. Its coronet was scarcely discoverable, and its gildings were mouldy; yet it seemed tenacious of what little remained of its dignity, and unwilling to subside into a mere hackney-coach. I believe I might have looked rather wistfully at it, (I was then a poor barrister, briefless and speechless in the back rows of the court,) when I perceived a head with a red nightcap suddenly pop out from the window, and heard myself addressed by name, with the offer of a cast to London. It was Lord Kenyon. He made the journey quite delightful by charming anecdotes of the bar in his own time, of Jack Lee, Wallace, Bower, Mingay, Howorth; the last of whom was drowned, he said, on a Sunday water excursion, in the Thames. The good old man was evidently affected by the regrets which his name awakened, and they seemed the more poignant, because his friend was called to his account in an act of profanation. 'But it was the sin of a good man,' he observed, 'and Sunday was the only day which a lawyer in full business could spare for his recreations.' He defended Erskine against some ill-natured animadversions. Erskine's nonsense would set up half a dozen such men as run him down. 'His private irregularities,' he remarked impatiently, 'are mere spots in the sun.' " Dark spots there latterly were indeed, but not curiously scanned by the profession, for his joyous spirit had diffused general warmth and life among them, and they would not gaze upon his faults too closely.

It seems strange that trifling acts of kindness, such as these we have noticed, should be in general so rare, for they are remembered with such lively pleasure, and performed at how small a cost! Dr. Dibdin has recorded his gratitude for a slight mark of attention which Lord Kenyon paid him when a student, but which swelled into a favour when the awful distance between the Chief Justice and the law apprentice is considered:—"It was usually my good fortune," says the reverend bibliographer, "(being very regular in my attendance,) to obtain a standing place just above Erskine and Mingay, who, after a short time, seemed to recognize

and to nod to me. The Chief Justice sat close by. One day, on retiring, he accosted me, and said, 'Well, young gentleman, when do you intend to become one of us?' I replied unhesitatingly, but respectfully, 'I should like it very much.' 'Try then!' was the immediate rejoinder."* He did try, in pursuance of this encouraging invitation, but those dangerous Circes—rare and costly books—allured him from his troth to the law, and he chose another helpmate.

To a more humble class in the profession—attornies' clerks—Lord Kenyon often showed forbearance and kindly feeling. He had been a clerk himself, and would venture to play with the cubs before their claws were grown. Soon after his appointment as Master of the Rolls, he was listening attentively to a young clerk, on whom the duty had fallen of reading to him the conveyance of an estate, and who on coming to the word "enough" pronounced it "enow." His honor immediately interrupted him: "Enough, according to the vernacular idiom, is pronounced enuff, and so must all English words which end in ough; as tough, rough, cough." The clerk bowed, blushed, and went on reading for some time, when (lo! the danger of a too comprehensive rule) coming to the word plough, he, with a raised voice and a penetrating glance at his honor, called it "pluff." The great lawyer stroked his chin, and with a smile candidly said, "Young man, I sit corrected."*

In this instance he merely showed good sense and command of temper. Another benefited by his kindness in a matter of some moment.† A youth of the name of Crabtree, who had just commenced serving his articles at Halesworth, in Suffolk, being anxious to procure the best advice for the prosecution of his legal studies, took a rare and somewhat presumptuous course of writing to the Chief Justice, and requesting his advice. He suspected from the signature that it was an impertinent hoax, and would have laid aside the letter in silence, had he not chanced to mention the circumstance in a casual conversation to Lord Thurlow, and ascertained from that nobleman, who

* Percy Anecdotes. † Legal Observer.

was accurately acquainted with this part of the country, that there was an individual of the name and profession described. Lord Kenyon wrote in consequence some very sound and very kind advice. But the modest letter of the ambitious student,—the "Open sesame" to the Judge's favour,—with his frank and valuable reply, possess sufficient general interest to warrant our insertion. Though very few of our younger professional readers could fancy they had written such a letter, each may imagine the answer to be addressed to himself.

"My Lord,

"I am a young man about to enter into the profession at the head of which you preside with such distinguished eminence, and am desirous of moving in the sphere I am placed in with as much credit as it will admit of. To gain a competent knowledge of the spirit and principles of the law must be most essentially necessary to the pure practice of it; and I am now induced, by the accounts I have always heard of your lordship's goodness, humbly to request that you will be pleased to honour me so much as to communicate to me the course of reading necessary to be pursued in order to attain so desirable an end.

"The mind, without a guide to direct its exertions, is like a traveller on a pathless desert,—bewildered and confused; it proceeds without knowing whither, and perhaps sinks in the pursuit of that which, by timely assistance, it might have attained with pleasure. Your lordship will certainly be astonished at my presumption, yet I trust you will not wonder at the reason of it. It is natural for a man eager after knowledge to wish to take it from the purest source. Common sense pointed out your lordship.

"If your lordship should not consider it beneath your dignity to take notice of this letter, I should have reason to consider it the happiest circumstance of my life to have experienced your condescending goodness. If, on the contrary, you should smile at my folly, or be offended at my presumption, I shall be sufficiently punished by silence and neglect. Humbly entreating your lordship's forgiveness for having thus long obtruded on your valuable time, I beg leave to subscribe myself

"Your lordship's

"Most devoted and

"Obedient humble servant,

"Halesworth, Suffolk. "ROBERT CRABTREE."

The following is Lord Kenyon's answer: —

"Sir,

"I am afraid you have concluded before this time I declined to answer your letter. To say the truth, I had some suspicion that the letter did not come from a real person; but being convinced of that, I do not delay to write to you. I wish it was in my power to propose any plan that you could rely on. The truth is, that in the study of the law a mass lies before the student, enough to deter young minds, and they are left to hazard in which road to proceed.

"I would advise you to read very carefully Blackstone's Commentaries; and if you have the perseverance to go through it two or three times, I believe it would be of great use. After this you may, perhaps, with some advantage, read Serjeant Hawkins' Abridgment of Coke's Littleton, and then proceed to Coke's Littleton, accompanying that arduous task with reference to the Abridgment I have mentioned, which will point out to you those points of that vast work which are now rather obsolete. When you have done this, you will read the more modern reports; Sir James Burrows's, Mr. Douglas's, Mr. Cowper's, and the Term Reports; and in equity, the first volume of Equity Cases Abridged, Mr. Cox's edition of Peere Williams, Hawkins's Reports in the time of Lord Talbot, and Precedents in Chancery. By the time this is done, you will be as good a judge as I am how to go on. If you mean to come to the bar, I would advise you to go to some *able* special pleader; but you will inform yourself who answers that description, as much ignorance now mixes in that profession. Conveyancing will be learned in the office you are placed in, and by referring to Horsman's or other books of precedent; and the poor law and sessions business from Mr. Const's late book and Burn's Justice.

"I heartily wish you success, and that you may deserve it by acting honourably in the prosecution of your profession.

"Your humble servant,

"May 13, 1793. "KENYON."

It would have been fortunate for the noble lord's popularity had these "mollia tempora fandi," these acts and tokens of graciousness, been more frequent; but they were the exceptions, not the rules, of his conduct to the profession, The prevailing defect in his private character,—a too rigid love of economy,—materially contributed to enhance their

dislike. He had learned habits of frugality at the table of the parsimonious Nantwich attorney; and these habits had become too inveterate to be laid aside, even when he should, in respect to his station, and from motives of worldly wisdom, if not hospitality, have discarded them. "The appointment of chief justice," says Espinasse, "should be supported with a certain degree of attention to appearances in the person and establishment of him who fills it. Custom has annexed to it the expectation of some appropriate parade, as necessary to impress on the common people a becoming respect for the office. This had always been the course adopted by Lord Kenyon's predecessors, has been followed by his successors, and was never departed from but by him. By discarding parade, he banished expense, and with it, to him, its attendant evils. The Bar, with professional pride, complained that to that consideration he sacrificed all the respect which appearances confer on his high office. They had also just cause to be offended, that, with his large income, he would not conform to the custom of the judges of assize entertaining at their private tables the members of the circuit they were about to go. Nor when they did meet on rare occasions at his lordship's lodgings on circuit, could it be said that his convivial powers compensated for the common fare, and worse than common circuit wine." The spirit of detraction can go no further. Those light allusions which are sometimes hazarded, and, however improper, allowed to pass in moments of convivial pleasantry at the high jinks of an assize town, could obtain from the grave judge not the slightest indulgence. "I recollect," continues Espinasse, who does not appear to have borne in his mind the pleasant reminiscences of a frequent and contented guest,—"I recollect the ludicrous but unexpected reception which a member of the circuit met with, on telling him the following anecdote of Chief Baron Yelverton of the Court of Exchequer in Ireland. The baron once went a Lent circuit, and one of the assize towns happened to be where one of his college cotemporaries was beneficed. The reverend gentleman, anxious to make a display of his zeal and talents, and at the same time to show his respect for the Chief Baron, asked permission from the

sheriff to preach the assize sermon before the judges, and his request was granted. It was in the month of March, and the weather was intensely cold. The sermon was immensely long, and the Chief Baron most annoyingly chilled. When the service was over, the preacher descended from the pulpit seemingly highly satisfied with his own performance, and came to the judge full of joyful expectation. 'Well, my lord, how do you like the sermon?' 'Wonderfully, my dear friend;' replied Yelverton, 'it was like the peace of God, it passed all understanding, and, like his mercy, I thought it would have endured for ever.'" This jocular narrative was chilled by hearing Lord Kenyon, in an under-tone, pronounce the words, "Very immoral."

The palm of wit must remain with the Irish judge, and with the English that of decorum.

The wicked wags of the profession avenged themselves for these slights by severe and clever jests at the expense of their saving chief. A brother lawyer having mentioned to Jekyll that he once went down into Lord Kenyon's kitchen and saw the spits as bright and unused as when they came from the maker. "Why do you mention his spit," said Jekyll, "when you know nothing turns upon that!" Upon another occasion the same punning satirist, with reference both to his petulance and penuriousness, said, "It is Lent all the year round in his kitchen, and passion week in his parlour." The appearance of his town and country residence, lonely and dark, was commented upon as too characteristic to bring the truth of this conjecture into question. The house at the Marsh Gate, half a mile on this side Richmond, exhibited, and still exhibits, a perfect specimen of a domestic economist's abode, flanked by a muddy duck-pond, with mouldering walls, and every appearance of desolation, reminding the passenger of the passage in the poet:—

> "Benighted wanderers the forest o'er,
> Cursed the saved candle, and unopened door;
> While the gaunt mastiff, growling at the gate,
> Affrights the beggar whom he longs to eat."

Nor was the front of his town mansion in Lincoln's Inn Fields, afterwards tenanted by Lord Erskine, more inviting.

It was the large and lofty house which was lately the Verulam Club House. The windows were of an unusual shape, and the light struggled through the dusty panes with difficulty. That, and the unusual height of the house, added to the gloom which enveloped its appearance, recalled Pope's description: —

> "Like some lone Chartreux stood the good old hall,
> Silence without, and fasts within the wall."

A hatchment was put upon this edifice after Lord Kenyon's death, with the motto, "Mors janua vita," the last letter written *a* by a mistake of the painter. This was pointed out by Jekyll to his successor, and by no means good friend, Lord Ellenborough. "Mistake," said his lordship, "it is no mistake! He left particular directions in his will that the estate should not be burdened with the expense of a diphthong!"

The personal appearance of Lord Kenyon, as he issued forth from this congenial mansion, seemed to justify the severe comment of his injured and sarcastic successor. We may cite the description given by Mr. Espinasse with the more confidence, since his testimony, though it be that of a very unfriendly witness, has met with abundant confirmation. If not poetical himself, Lord Kenyon seems to have been the cause of much poetry in others. "On entering Guildhall, Pope's lines in the Dunciad on Settle, the poet, came across me, and I quoted them involuntarily: —

> "Known by the band and suit which Settle wore,
> His only suit for twice three years and more."

"Erskine would declare that he remembered the green coat of this modern Lord Mornington for at least a dozen years."

This Lord Mornington, we read, was a Scotch peer, but not one of those who sat in Parliament. Being arrested, he moved the court of Common Pleas to be discharged, as being entitled by the act of union to all the privileges of a peer of Great Britain, except a seat in Parliament, and prayed an attachment against the bailiff; on which a rule was granted to show cause, and thereupon the bailiff made an affidavit that, when he arrested the said lord he was so mean in his

apparel, as having a worn-out suit of clothes and a dirty shirt on, and but sixpence in his pocket, he could not suppose him to be a peer of Great Britain; and, therefore, through inadvertency arrested him. The court discharged the lord, and made the bailiff ask pardon.

"Erskine did not exaggerate the claims of the coat to antiquity. When I last saw the learned lord he had been Chief Justice for nearly fourteen years, and his coat seemed coeval with his appointment to the office. It must have been originally black, but time had mellowed it down to the appearance of a sober green, which was what Erskine meant by his allusion to its colour. I have seen him sit at Guildhall in the month of July in a pair of black leather breeches; and the exhibition of shoes frequently soled afforded equal proof of the attention which he paid to economy in every article of his dress."

To these unfortunate shoes Dr. Dibdin bears a similar testimony. "Once, in the case of an action brought for the non-fulfilment of a contract on a large scale for shoes, the question mainly was, whether or not they were well and soundly made and with the best materials. A number of witnesses were called. One of them, a first-rate character in the gentle craft, being closely questioned, returned contradictory answers, when the Chief Justice observed, pointing to his own shoes, which were regularly bestridden by the broad silver buckle of the day, 'Were the shoes any thing like these?' 'No, my lord,' replied the evidence, 'they were a good deal better and more genteeler.' The court was convulsed with laughter, in which the Chief Justice heartily joined."

"But we should not have his dress complete," says another observer, "were we to omit the black velvet smalls*, worn for many years, and thread-bare by constant friction, which he used to rub with most painful assiduity when catechizing a witness. For he was not more refined than Sir Fletcher Norton, who, when pleading before Lord Mansfield on some question of manorial rights, chanced, unfortunately, to say,

* The black velvet must have been his winter, and the black leather his summer wear.

'My lord, I can illustrate the point by an instance in my own person; I myself have two little manors.' The judge immediately interposed with one of his blandest smiles, 'We all know it, Sir Fletcher.'" *

"Lord Kenyon's equipage was in perfect keeping with his personal appearance, and was such as to draw down the sneer of ill nature, and the regret of those who held him in respect. The carriage which conveyed the Lord Chief Justice and his suite to Westminster Hall (probably the identical one mentioned by Mr. Adair) had all the appearance and splendour of one of those hackney coaches which are seen on the stand with a coronet and supporters, — the cast-off carriage of a peer, or foreign ambassador. Though the seats were occupied by the Lord Chief Justice himself and his officers in bags and swords, the eye was involuntarily directed to the panel to look for the number of the coach, as its appearance, and that of the horses which drew it, confirmed the impression that it had been called off the stand. They moved with the most temperate gravity, and seemed to require the frequent infliction of the whip to make them move at all."

These traits are minute, but not without interest, as tending to develope character, to show the defect in those minor virtues and outward observances, which rendered Lord Kenyon less popular in society, than so good and great a man must otherwise have been. The facetious Sam Foote, when he found himself, as was too often the case, transgressing the bounds of decorum on the stage, used to affect to check his exuberance, exclaiming, "Pleasant, but wrong;" the learned judge, had he felt disposed to pass a criticism on his general conduct, might have transposed the admonition, "Right, but not pleasant." His irreproachable domestic morals and strict probity could not compensate with the world at large for the small neglects and sins against conventional usage, which brought their own punishment, a more than sufficient share of contumely and re-

* For the above illustration, and several of the preceding anecdotes, the author is indebted to the kindness and happy memory of the late James Smith, Esq., one of the authors of the "Rejected Addresses."

proach. He practised the rigid good faith of the executor, who handed over to the residuary legatee of thousands, as a last remnant, the sum of 3½*d.*, which he had found in an old drawer; and might, in the first flush of youth, have been enrolled an honorary member of the Temperance Society, and president for life of the Society for the Suppression of Vice. But he wanted the buoyant spirit, the gracious manner, the happy address, the gay humour, the festive temper, which made his protégé, Erskine, such an universal favorite. There was the sound material of worth, the solid canvass which outlasts the gay colours of skilful art; the rough bar of gold was there, though crusted over and dim with rust. We question the truth of the poet's observation, taken even in a comprehensive sense, that—

"An honest man's the noblest work of God;"

—else should we rank the subject of this memoir among the noblest of those who are stamped with their Maker's image; for, whilst we believe that a more able lawyer, sure are we that a more honest man, never entered Westminster Hall.

CHAPTER IV.

THE LIFE OF LORD ALVANLEY.

LAWYERS, said a county member, with a prejudice not uncommon among country gentlemen, have no pedigrees. To the honour of the profession, we may freely confess that the sons of barbers, grocers, and coal-meters, that aliens and foundlings, men with no known grandfathers, the *terræ filii* of the satirist, have conferred dignity on the chief seat of justice, and adorned the side cushions of the bench. The broad stream of our nobility is fed by rills, whose obscure origin escapes the notice of the curious, and by fountains under ground. But though the majority of eminent lawyers have been the founders of families, and have included no ancestral names or dignities in their patent of peerage, there are others who can claim a descent as pure and ancient as the occupiers of paternal acres.* Of this number was Lord Alvanley, whose first ancestor known to fame was Alwyn de Arderne, sheriff of Warwickshire in the reign of Edward the Confessor. We read in Lyson's Britannia, that "the elder branch of the Ardernes, whose chief seat was at Aldford, where they had a castle, became extinct in the principal line by the death of Halkeline Arderne, in or about the reign of Richard the Second. The present John Arden, Esq., for so the family have of late years spelt the name, is descended from Sir John Arderne, a younger brother of Halkeline, whose posterity settled at Alderley about the beginning of Edward the Third's reign, and ended after a few descents in a female heir, who married into the Weaver family, whose heiress was united to the ancestor of Sir John Thomas Stanley, Baronet. † The Ardernes of Leicestershire were descended from a younger son of Ralph Arderne, of Harden, in the fifteenth century. Joannes de Arderne, Lord of

* The first Howard was a successful lawyer, and so was the first Cavendish.

† Now Lord Stanley of Alderley.

Hatheford, in the twelfth year of Henry the Third, father of Halkeline de Arderne, Chief Justice of Chester, was Lord of Aldford, Alderly and Weaver *jure uxoris.*" But, without wading too deeply into the long antiquarian roll, the conclusion may be stated shortly: that this old and honourable house were allied to the chief county families, the Stanleys, Davenports, Dukenfields, and Leghs of Booths.

Richard Pepper Arden, the second son of John Arden, Esq., was born at his father's seat in the parish of Bredbury in Cheshire, in 1745. He was christened Pepper, from his mother, an heiress of that name, in the North Riding. He received his first education at the Manchester grammar school, of which the Rev. Mr. Lawson was at that time head-master, and was placed under the immediate tuition of Mr. Thyers, well known to the literary world by his edition of Hudibras. In October, 1763, young Arden was admitted a gentleman commoner of Trinity College, Cambridge; and, though not a hard-working man, is said to have distinguished himself by his public exercises, and to have gained the prize for declamation in chapel. A place in the tripos paper was then of much easier attainment than the ardent spirit of competition has since rendered it. But to attain the situation of seventh wrangler, which he carried in 1766, spoke well for his acuteness and application; and that he had not neglected the classics, was soon attested by his election to a Trinity fellowship. His easy manners, gay humour, and good nature, made him a general favourite in his college. With the True Blue Club, long established there, we are assured the young fellow was held in especial honour, being even less of a scholar than (as Dr. Johnson would say) a clubbable man. In compliance with his father's wish, he entered at the Middle Temple, but continued to reside occasionally on his fellowship for some years. The delicate task of a revision of the statutes of Trinity, which had occasioned much litigation in the days of Bentley, was intrusted to his care, and he executed the charge with such ability that no change of any moment has been made in them to the present day. He was called to the bar in 1770, and after a pupilage, not very laborious, for two years, in the chambers of an equity

draftsman, commenced a regular attendance in the Court of Chancery. A lucky accident exercised the most powerful influence on his future fortune. He had taken a set of chambers in Stone Buildings, on the same staircase with those subsequently occupied by Mr. Pitt; and a slight acquaintance between the two young lawyers was soon ripened, by their near neighbourhood, into the closest friendship. They were both alike free from professional engagements. Mr. Justice Rooke wondered to see the youngest son of Lord Chatham, of whom great things were even then expected, dangling for five days in the Common Pleas court with a guinea brief; but he was only undergoing the purgatorial process usual in the profession. Arden might have been seen loitering in the adjoining court, with the sole difference that he had no brief to dangle. He chose the Northern Circuit, at that time led by the staunch whig who rejoiced in the cognomen of honest Jack Lee, Wallace, and Serjeant Walker. The same hilarity of disposition which rendered Arden popular in the common room, was a sure passport to favour on the circuit. No barrier could be opposed to the popularity of one who was ever ready with the jest, on the true give-and-take principle, and who entered with glee into all the conviviality and circuit fun, which relieve the tedium of unoccupied leisure. For professional business he could afford to wait, his father's liberality allowing him a handsome competence. He often rode his first circuits on horseback, a custom then more frequent than of late years, when good posters are to be met with on almost every road, not traversed with rails; and he alluded afterwards with much good humour to one of his misadventures in purchasing a hack. When summing up a case, which turned on the point whether a horse, in jockey phrase, a roarer, was unsound, he thus introduced his own experience:—

"Some years ago an action was brought against a gentleman at the bar respecting a horse which he had bought to go the circuit. The horse was taken home, and he mounted him to show his paces; the animal would not stir a step; he tried to turn him round, but he was determined not to go the circuit. The horse-dealer was informed of the animal's

obstinacy, and asked by the purchaser how he came to sell him such a horse. 'Well,' said the dealer, 'it can't be helped; give me back the horse, allow me five pounds, and settle the matter.' The barrister refused, and advised him to send the animal to be broken by a rough-rider. 'Rough-rider!' said the dealer, 'he has been to rough-riders enough already.' 'How came you to sell me a horse that would not go?' rejoined the lawyer. 'I sold you one warranted sound,—and sound he is,' concluded the dealer; 'but as to his going, I never thought he would go, and never said he would.'"

Both Clavering and Sir Egerton Brydges, however, relate anecdotes of Sir Pepper Arden's disasters, when encountering the perils of a review; and from their personal observation it may not unfairly be inferred that he had a better seat in court than in the saddle. His family connexions supplied the want of clients. Early in his professional career he received the compliment of being elected Recorder of Macclesfield, in the room of Mr. Serjeant Davenport. In 1776 he was appointed, with Mr. Justice Barrington, to preside over one division of the old South Wales Circuit, an office of some emolument and honour, and no fatigue. The civil business was necessarily slight from the smallness of the counties, comprising a rural population and insignificant amount of traffic; and as to his criminal labours, the most painful part of judicial duty, the extent of these was best explained by a jocular serjeant, who went that barren round, and when asked if he expected much business on the circuit, replied off-hand, "Very little, as far as I collect. We read of three or four murders in the calendar; but I understand the parties have met and have made it up: they are all compromised."* One of the South Wales judges, Mr. Hardinge, more prone to rhetorical effusions than Mr. Arden, was accustomed to vary his addresses to the grand juries in the following manner: At Brecon he would say, "Where, gentlemen, is my calendar? It is not in my hand. It is a perfect blank. There is not one prisoner for trial." When he got to Cardiff, he would add, "I cannot forbear to admire

* Nichol's Literary Anecdotes.

the eloquence of the gaoler and of his calendar. There I perceive three little words, never to be surpassed by Demosthenes himself, 'None for trial.' May those brilliant words record and perpetuate the honour of this county for ages to come!" Arrived at the last circuit town, Presteigne, the learned orator would thus ring a triple bob major over the paucity of crime: "I pass over the calendar with its pilfered watch, the single and petty offence brought before us, just as if no calendar had been put into my hand. We come to deliver, as it is called, an empty gaol."*

The increase of a manufacturing population has tended to destroy this Arcadian simplicity; but in North Wales the same absence of felons is happily not infrequent. When Lord Lyndhurst, then Chief Baron, first visited Dolgelly, he expressed his surprise to the high sheriff that there should not be a single prisoner for trial. That worthy official seemed afraid that his lordship might be offended at such a state of things, and answered, with much concern for the honour of Merionethshire, "I can assure you, my lord, the whole county has been in pursuit of a sheep-stealer!" On another circuit, one of the puisné barons, who, like the subject of our memoir, was not disinclined to blend judicial gravity with wit, found in the assize town of Flintshire only one prisoner, charged with simple larceny, and is reported to have thus pithily harangued the grand jury, whose full number was complete: "Well, gentlemen, four-and-twenty of us to one poor duck!" But we are wandering too far into the Welsh marches. Revenons à nos moutons.

The licence which Mr. Arden could afford to take in his little domestic forum, and a natural vivacity of temperament, sometimes betrayed him into escapades of rather too lively a character for the demure presence of the Court of Chancery. On one occasion, disputing with his boon companion, Mr. Graham, about the age of awo man stated in an affidavit to be forty-five, but whose age Mr. Arden had reason to suspect was considerably more, he shocked the serenity of the court by exclaiming, in the warmth of his argument,

* Hardinge's Remains.

"I'll lay you a bottle of wine;" and was only called to a sense of his indiscretion by the indignant look of Lord Thurlow. His instant apology, "I beg your lordship's pardon, I really forgot where I was," could not pacify the offended functionary, who, being no friend to Mr. Arden, growled forth, "You thought you were in your own court, I presume!" Notwithstanding the enmity of the Chancellor, he grew steadily into estimation with the public, and acquired a sufficient amount of professional business to extort, under Pitt's patronage, the grant of a silk gown in 1780. The rank of king's counsel was not at that period lavished with indiscriminate profusion, nor did the head of the profession think it compatible with his dignity, as related of a modern chancellor, to issue promissory notes to aspiring young barristers of "silk payable at sight." We should not be sorry to see the old jealousy revived, and the former practice adhered to. The advice of Windham, that no lawyer should think of becoming member of parliament till he had pretensions to be made solicitor-general*, was anticipated in practice by Mr. Arden, whose friend, Pitt, had now grasped for a short tenure the seat of government, and who saw, in near perspective, official rank and dignity before him. The influence of his connexions soon made a vacancy in a snug borough, and in December 1782, having attained the mature age of thirty-seven, he took his seat for Newton, in the Isle of Wight. Mr. Pitt was then in the death struggle of his first ministry with the Fox and North coalition; and his brother lawyer threw himself with characteristic ardour into the first ranks of the fiercely contending parties. Through the eventful year 1783 he acted what is technically termed the part of backer to his friend. He could lay no claim to the higher order of oratory, and seldom ventured to come to open conflict with the mighty chiefs of the whigs, but led a band of sharp-shooters, and with little caustic sayings, bitter gibes, and sharp personalities, the sparrow-shot of debate, made himself an object of dislike and fear.

* Sharp's Letters and Essays.

When Fox brought forward, in a house devoted to him, his motion for an address to the King to dismiss an obnoxious administration, Mr. Arden moved, as an amendment, "That, as the ministers were guilty of no crime, and no charges were brought against them, they ought to be dismissed;" and when "the man of the people" paraded his loyalty, being much more in favour with the Prince than with the King, Mr. Arden rejoined, that "his attachment to the person of majesty was all from veneration for his ancestors, and the love of his posterity."* With equal point Mr. Arden ridiculed Fox's motion on the Westminster election. "The house, forsooth, were to make the 'amende honorable,' and appear before the Westminster electors in Westminster Hall, in white sheets, making humble confession of their guilt."

When that arbitrary measure, the East India Bill, "launched in th' eclipse" of the fortunes of the ministry, was urged with precipitate violence through the Commons, Mr. Arden's voice was one of the loudest and most persevering in the denunciation of its dangerous and arbitrary tendency. He declared "that he regarded Lord North as a king, and the right honourable gentleman, Mr. Fox, as an emperor, the emperor of the East. The seven commissioners, also, might be considered as seven emperors, seven holy Roman emperors, tributary and subordinate to the emperor of the East."† He cited against the aspiring minister the beautiful caution of Shakespeare—

> "He would be crowned—
> How that might change his nature, there's the question.
> It is the bright day that brings forth the adder;
> And that craves wary walking:"

continuing the quotation, with great effect to an excited audience, till he arrived at the moral in the last three lines:—

> "And therefore, think him as a serpent's egg,
> Which, hatch'd, would, as his kind, grow mischievous,
> And kill him in the shell."

The bill had been read a third time before the Secretary of the Treasury rose to move the insertion of the usual

* Parliamentary History, vol. 22. † Ib.

clause, which had been accidentally omitted, that it should be considered as a public act; on which Mr. Arden jumped up with the ready sneer, that "he was not surprised at the oversight, for he had always considered the measure to be a private job."

The opposition had not striven—

> "Crimnibus terrere novis: hinc spargere voces—
> In vulgum ambiguas"—

to instil jealousies and fears in vain. Notwithstanding their proud majority in the Commons, the obnoxious, scheming whigs were thrust from their places with contumely—the Lords, yielding to the entreaties of the court, rejected the bill—the seals of the disgraced secretaries were demanded at midnight, and Mr. Arden, the new Solicitor-General, had the flattering distinction conferred upon him of moving "for a new writ for the borough of Appleby in the room of the right honourable Mr. Pitt, who had accepted the offices of First Lord of the Treasury and Chancellor of the Exchequer." So hopeless did the attempt at forming a ministry appear, in the face of the tyrant majority, that the announcement, we are informed by Bishop Tomline*, was received with long and loud derisive cheers from the opposition benches. The event is well known. After the most memorable struggle recorded in parliamentary annals, sustained by Pitt with magnanimous firmness, he reduced the superior numbers of his adversaries from forty-five to a forlorn unit, and appealed to the country, by a dissolution, with such complete success, that one hundred and eighty of the hostile band, handed down to posterity as Fox's martyrs, lost their seats in the house. Mr. Arden, who had never flinched from the side of his great patron, was, in March 1784, appointed Attorney-General.

Of the friendly zeal with which, in the first flush of an electioneering contest, he supported his friends, the following letter forms a good example.

"Dear Wilberforce, "Lincoln's Inn, March 31, 1784.

"I received your letter, and you may be assured of every wish of my heart for your success if you stand for Yorkshire. God

* Life of Pitt.

grant you health to go through the fatigue of being a candidate for such a county. I wrote, the moment I received your letter, to my father, desiring him to exert that influence he has in favour of Duncombe and you. I desired him, likewise, either to attend at the nomination himself, or send my brother, if he is at home; and I hope he will subscribe handsomely. His estate in Yorkshire is not a very large one, but I think it will be in his power to be of service to you; and I cannot entertain a doubt of his good will. I have just kissed hands as Attorney-General and Chief Justice of Chester. Every thing goes on well, both at Cambridge and the world in general, as to elections. Pitt, thank God, keeps his health and spirits amidst a series of fatigues which would make me mad. I am,

"Dear Wilberforce,

"Your most sincere and affectionate friend,

"R. P. ARDEN."

The new parliament met, the whig opposition shorn of their numbers, but with increased venom; their ranks still including mighty masters of eloquence and wit; too jealous of their leader's fame, and too sensitive to the mortification of defeat, not to long for an opportunity of retribution on the authors and abettors of their disgrace. They suspected that the Attorney-General's knowledge of law was not deep, and lay in wait to punish him when caught tripping. His giddiness and incaution soon afforded the anxiously desired occasion. He had concurred to the last in the Westminster scrutiny, and elicited from Fox the indignant reproof that "if, after all that had passed on the subject, he had still opinions of his own, what sort of principles would *he* carry to the bench with him, when he should be made a judge, and what security could there be in *his* administration of justice, who presumed to suggest and insinuate opinions contrary to all they had heard at their bar, and contrary to the 'evidentia rei.'" To cure the monstrous evils of vexation and delay which had resulted from this inquiry, the Attorney-General introduced a bill, hastily and loosely drawn, for "Regulating the Duration of Polls and Scrutinies in the Election of Members to serve in Parliament." This unfortunate bill was set up as a target for all the keen shafts of opposition.

Mr. Sheridan, we are told in the amusing report of the

debate*, pointedly attacked the preamble and some clauses of the bill, and stated the inaccuracies with great precision. "The Attorney-General attempted a defence, but, unfortunately saying that he had not read the Statutes at Large, and that there was an act respecting the scrutiny in Norwich, in opposition to Mr. Sheridan's positive assertion of there not being any act respecting any scrutinies, except in the city of London, a running fire was kept up, and Mr. Attorney felt the force of Mr. Sheridan's wit, Mr. Courtenay's humour, and Mr. Fox's satire, for a considerable length of time, to which he now and then attempted a reply.

"Mr. Courtenay ironically complimented the Attorney-General on the able and unanswerable manner in which he had defended himself, and said, if he were not of a very compassionate and feeling disposition, he should not have troubled the committee with a word on the subject; but, as he listened with indignation to the unmerited and severe strictures that had been thrown out against the learned gentleman, which he saw had affected him deeply, and as he always (from sympathetic and sentimental feelings) pitied a great man in distress, he could no longer sit silent. He then observed, that an unfair and uncandid advantage had been taken to attack the learned gentleman, whilst his able colleague, the Solicitor-General, was confined to the chair, and precluded from assisting him with those brilliant abilities, and that profound professional knowledge, which always carried conviction to the House. In consequence of this, the learned gentleman had been overpowered, by having the voluminous code of law contained in Ruffhead's edition of the Statutes at Large flung at his head; and this malicious species of attack had been carried on in the most insulting and provoking manner—not by learned gentlemen of the same profession, but by honourable members of the house, who seemed, somehow or other, to have acquired more precise and accurate ideas of law and the constitution than his Majesty's Attorney-General. However, he hoped the learned gentleman would not sink into despondency and despair on

* Parliamentary History, vol. 22.

this trying occasion. He might still comfort himself, by reflecting that his unlearned opponents were not lawyers, and therefore his credit and reputation could not suffer by any momentary victory they obtained, as they could not pursue him into the courts below. He begged the learned gentleman to consider himself in the situation of Sancho Pança, when he was beat with the shoemaker's last; Don Quixote very philosophically proved to the disconsolate Sancho that the meanness of the instrument took away the disgrace of the drubbing; but that if he had been conquered by a squire of his own rank and degree, the ignominy would have been indelible. There was no subtlety, no trick, no deception, he said, in the learned gentleman; all was fair, liberal, and candid in his proceedings; and unless it had been generally known that he really was his Majesty's Attorney-General, no one could ever have suspected it from the professional talents he had exhibited that night. This modesty was certainly a peculiar merit in the learned gentleman, and a singularity not practised by any of his predecessors in office, but which deserved the highest eulogiums. The learned gentleman had, likewise, he observed, in the exuberance of his fancy, triumphantly asserted that there was a statute purposely framed to regulate polls and scrutinies in the election of members of parliament for the city of Norwich; and dwelt with some degree of exultation on the error of an honourable gentleman (Mr. Windham), who had presumed to differ from him on this point. However, the fact turned out that the bill alluded to was intituled, 'An Act for regulating the Measure of Norwich Stuffs and Druggets, and for electing proper Officers, &c. &c. to carry the same into execution.' This slight mistake, with five or six more of a similar nature, had been pointed out, and seemed to have made (very improperly indeed) some impression on the house; but such futile objections were instantly obviated by the right honourable the Chancellor of the Exchequer, who observed, with his usual sagacity and discernment, that there was no room for triumph, by exhibiting proofs of ignorance, folly, and precipitation in the bill, where every clause was pregnant with them; and that it was an easy task for gentle-

men, who studied the statutes for the purpose of cavilling and faction, to embarrass and perplex his learned friend, who had repeatedly acknowledged he had never read one of them.

"Mr. Courtenay added a variety of sarcastic and ludicrous remarks to the same purpose, all of which were received by the House with great relish." The unlucky Attorney-General, after a few lawyers had spoken, avoided further discussion with some smartness. "When below the bar he had always seen the house glad to get rid of lawyers as soon as possible. With the view of getting the debate out of their hands, he desired the question might be read."

The raillery of opposition was not confined to prose. With the poisoned arrows of the Rolliad they waged a vindictive warfare. They celebrate the wonderful epoch—

> "When Wilkes to loyalty makes bold pretence,
> Arden to law, the Cabinet to sense;
> When lawyers argue from the Holy Writ,
> And Hill would vie with Sheridan in wit;"

and observe that the gallery clock will supply cheer-trap tricks to Pitt—

> "And strange to tell! in Nature's spite provoke
> Hot Arden once to blunder on a joke;"

adding the following sarcastic note:—

"The miracle of a jest from Mr. Arden, happened on the occasion of some resolutions having passed between the hours of six and seven in the morning; for which reason the Attorney-General facetiously contended that they were entitled to no respect, 'as the House was then at sixes and sevens.' Any approximation to wit in debate being perfectly unusual with this gentleman, however entertaining his friends may think him in private, our author very properly distinguishes this memorable attempt by the same kind of admiration with which poets commonly mention some great prodigy—as, for instance, of a cow speaking,—

> ——————— pecudesque locutæ
> Infandum!

We hope none of our readers will attribute to us the most distant intention of any invidious comparison."*

* Rolliad.

An affectation of contempt is every evident in these and similar sallies of opposition. Had Mr. Arden's talents for debate been felt less keenly, we should have heard no complaints of his forensic failures, and no gibes on his dulness. But the personal appearance of the obnoxious Attorney afforded a fairer scope for ridicule than his want of law. It was thought that to cite the verse of Martial —

" Non cuicunque datum est habere nasum; "

to jeer in false antithesis—

" On the great lawyer with the little nose;"

to repeat—

" That Arden's law and nose alike were lost; "

and comment on his ugliness in a probationary ode, taunting him as

" The tallest, fittest man, to go before the king,"*

might wound the sensitiveness of his self-love even more than insults on his understanding, for he must be conscious of far greater deficiency in the one than in the other. But his good sense and good humour disarmed such topics of their sting. He had shown his utter want of personal vanity, in a discussion on sending commissioners to treat with America. His name having been generally approved of as one of these commissioners, he laughed away the proposal, expressing his wonder how it could have occurred to any one that he could go on a courting voyage to America, and playing with the idea of such a plain fellow as himself being appointed to make love to such a termagant. " Surely," he remarked, " if Great Britain wished to succeed, she would select a man of more gallantry and better appearance than himself to be the wooer." Fortunate for the peace of the unpopular politician was this manly disregard of personal disadvantages. Had he winced beneath the raillery of the opposition benches, his seat in the house would have been one perpetual blister, so prompt and witty was their malice, and so many points were there for animadversion in his appearance. By one cotemporary he is described to have been " a singularly ugly little man, with a confused distraught manner, having a sort of broken nose,

* Probationary Odes.

and goggle eyes that squinted."* The portraiture drawn by Sir Nathaniel Wraxall is not a whit more flattering:—

"Nature," says our gossiping baronet, "has seldom cast a human being in a less elegant or pleasing mould. Even Dunning's person would have gained by a comparison with his. Though his face did not want a nose, like D'Avenant's, it had only a very defective feature of that name. Nor did his figure redeem his countenance, for it was both short and thick." Notwithstanding this singular deficiency in those exterior graces which win the eye of woman, Mr. Arden was fortunate enough at this time to form a most happy, and, in the worldly sense, advantageous marriage. In the autumn of the year which saw him appointed Attorney-General, he was united to Anne Dorothea, eldest daughter of Richard Wilbraham Bootle, Esq., a gentleman of very old family and extensive parliamentary influence in his native county, whose son has been since advanced to the peerage by the title of Lord Skelmersdale. With this lady—elegant, amiable, and attractive—he led a domestic life of singular felicity till his death, a period of twenty years. She survived him, and we have the testimony of a most discriminating witness, Sir Walter Scott, to the power of her fascinations, even at an advanced period of life.

"Among the many amiable English friends," we are told, in a Life equally honourable to the head and heart of the biographer, "whom he owed to his frequent visits at Rokeby Park, there were, I believe, none that had a higher place in his regard than the late Anne Lady Alvanley, widow of the celebrated Chief Justice of the Common Pleas. He was fond of female society in general; but her ladyship was a woman after his heart, well-bred, and highly bred, but without the slightest tinge of the frivolities of modern fashion, soundly informed, and a warm lover of literature, but holding in as great horror as himself the imbecile chatter, and affected extacies, of the blue-stocking generation. With Lady Alvanley and her daughters Sir Walter Scott spent much of his time in Paris."† This accomplished matron survived her

* Clavering's Autobiography. † Lockhart's Life of Scott.

husband till January 1825, and left two sons and four daughters the fruit of their happy union. That Mr. Arden should have achieved such a conquest is the best tribute that can be offered to the excellence of his mind and manners, to the charms of his conversation, his wit, and gaiety. Lawyers are in general reckoned a hard-featured, sallow race: but what lawyer need despair, when the original of the portrait we have copied could win wealth, grace, and beauty?

Mr. Arden held for five years the high office of Chief Justice of Chester, in conjunction with that of Attorney-General, an union of offices which appears incompatible on constitutional grounds, and liable to much remark. It was justly observed*, that to appoint a gentleman holding a lucrative office at the sole pleasure of the Crown (and removable the very moment that he might give dissatisfaction to the Crown) to a high judicial situation, was extremely inconsistent with that independence of the judicial character which it was so important to preserve inviolate; that the integrity of the judge ought not to be exposed to be affected either by the hopes of royal favour, or by the fear of royal resentment. However objectionable in theory, the conjunction was generally persevered in till the abrogation of the Welsh judicature; and neither in Mr. Arden's case, nor in Lord Kenyon's, nor in that of their successors, does there appear to have been the least suspicion of the decisions being tainted by corrupt influence, or even by secret bias. The five years during which Mr. Arden (for he shrunk from the questionable honours of knighthood) continued to exercise the office of Attorney-General, were periods of rare domestic tranquillity. A perfect calm had succeeded to the storms which so lately shook the political world; and, if some unquiet spirits now and then sought to disturb the national repose, the first law officer of the Crown had too much prudence and good nature to file criminal informations in cases of doubtful expediency, or urge his ex officio power where no pressing necessity required its exercise.

A pleasing contrast is afforded by his dynasty to those

* By the late Sir S. Romilly.

which immediately preceded and followed it; and though much of this laudable forbearance must be imputed to the spirit of the times, some portion of it is fairly attributable to the temper of the man. Content with his peaceful round of forensic duties in the Court of Chancery, he appears to have cautiously abstained from the perilous arena of the King's Bench, and to have refused to put any subject on his trial, unless confident in the advantage to be derived from a public inquiry, and sure of a conviction. Lord Mansfield, when he filled the same office, with proverbial wisdom, never lost a cause civil or criminal for the King; he made it an inflexible rule that the King should be always clearly in the right, and the moment a case appeared doubtful he abandoned it.

The only exception to Mr. Arden's merciful course was the prosecution of Lord George Gordon, who, emboldened by his escape from the consequences of the riots in 1780, which his own guilt and folly had in great measure created, was again seeking to disturb the public peace by two seditious and inflammatory libels on the justice of his country and, by a strange confusion of ideas, on the Queen of France. In the first of these he drew up a petition to himself, purporting to come from prisoners about to be transported to Botany Bay, stating: "The records of justice have been falsified, and the laws profanely altered by men like ourselves. The bloody laws against us have been enforced by mere whitened walls, men who profess only the show of justice, and have condemned us to death contrary to law."* In the other libel the ravings of the French revolution were anticipated against the lovely Marie Antoinette; and on his trial, the deluded nobleman, who displayed clear tokens of mental hallucination, expressed himself in such atrocious language with reference to that unhappy daughter, wife, and mother of kings, that the Attorney-General exclaimed, in a transport of indignation, that he disgraced the name of Briton. He was sentenced to a term of five years imprisonment, to the severity of which judgment his former sedition no doubt

* Trial of Lord George Gordon for libel.

contributed. He afterwards became a Jew, and died miserably in prison, proving, in his latter days, that he could scarcely be considered as having the capacity of a moral agent, and extorting a wish, that the lenity, which Mr. Arden displayed to others, had been extended to him.

Of the Attorney's judgment and pleasantry in one of the incidental duties connected with his office, an amusing and characteristic anecdote is recorded in "The Life and Times of Reynolds:"

"To refuse or grant a patent for a new invention, is peculiarly within the province of the Attorney-General, who does not in general exercise a very strict surveillance. A French count having discovered the means of creating an impelling power, by the aid of an artificial wind counteracting the effects of the natural wind, Baron Pilnitz thought that this balloon would be seen sailing like a ship, and applied for a patent. The Attorney-General, naturally surprised at this extraordinary application, desired an interview; and my father being out of town, I was compelled to conduct the count to Mr. Arden's chambers, in Portugal Street, when the following curious conversation ensued:

"'Pray what does this absurd application mean?'

"'Mean, sir,' I repeated in surprise, 'it means, sir, that by artificial wind, counteracting the effects of the natural wind, we can direct balloons.'

"'And what then?'

"'What then, sir?'

"'Aye, and what then?'

"'Why, sir,' I replied with great consequence and volubility, 'we shall not only raise botany to the highest pitch of perfection, by transplanting fresh roots and plants from one country to another; we shall not only raise the sieges of garrisons, by introducing armed men and provisions at our pleasure; but we shall discover the North-west passage.'

"'Aye,' interrupted the Attorney-General, scarcely able to suppress his laughter, 'and in your mighty wisdoms, I suppose, not only defraud the customs and excise, but annihilate the revenue resulting from the post-office. Pooh!

nonsense! artificial wind! (laughing heartily.) Stuff. Who is to supply the wind? Your client there?'

"The baron, seeing the Attorney-General, as he conceived, delighted, smiling said:

"'L'Advocat-Général, que dit-il, Monsieur Fréderick?' I replied, in my usual bad French, made worse by confusion,

"'Il demande, baron, si vous êtes le personne qui fait le vent flatulent.'

"'Diable!' exclaimed the baron.

"The Attorney-General then rose, bowed, and coolly desired me to tell my father that the baron's was less a case for a lawyer than a physician."

On the promotion of Sir Lloyd Kenyon to the Court of King's Bench, in 1789, Mr. Arden expected to succeed, without difficulty, to the vacant office of Master of the Rolls, and his expectation was enforced by the general voice of the profession. The wayward and impracticable temper of Lord Thurlow, presented, however, an unexpected obstacle. He held Arden in personal dislike, without respecting his legal talents; though the secret of this enmity and disesteem may be readily traced to the Chancellor's lurking jealousy of Pitt. Through the side of his friend he sought to wound the hated premier, and opposed to the appointment every official impediment and delay that animosity could suggest. In the keen cabinet discussions which ensued between the rival colleagues, alike eager for personal power, and jealous of being thwarted, a brusque saying of Lord Thurlow's became noised abroad: "I care not who the devil you appoint, so that he does not heave his wallet on my shoulders;" and the whig journals of the day rejoiced at the Attorney-General's being bandied to and fro, in shuttlecock fashion, between the Chancellorship of the Exchequer and the Court of Chancery. "When Mr. Pitt," said Lord Eldon, "proposed to Pepper Arden the office of Master of the Rolls, Pepper handsomely wished to decline it, saying, that he was sure it would be disagreeable to Lord Thurlow. Pitt replied, 'Pepper, you shall be Master of the Rolls; and as to Thurlow, I may just as well quarrel on that as on

any other subject with him.' Lord Thurlow, on hearing of the appointment, said that his time would be spent in reversing that fellow's decrees." He broke out in metaphor too. An old book of precedents, which is now in the possession of Mr. Colville, of the Registrars Office, and which belonged, in the latter part of the last century, to Mr. Green, another celebrated registrar, has a paper attached to it containing this passage in print: —

"The following description of the duty of a Master of the Rolls is given by a Lord Chancellor not a hundred years ago. 'I look upon my court and that of the Rolls to be somewhat like a stage coach, which, beside the skill of the coachman, requires the assistance of an able postilion to lead the horses and pick out the best parts of the roads. Now if I have got an ignorant furzebush-headed postilion, he may overset the coach and tumble us both into the ditch.'"* The spirit of Lord Thurlow quailed at length before a determination even more stubborn than his own, the suggestions of pride being seconded by feelings of friendship; but not till an appeal had been made to the King, and a warrant was actually preparing to put the seals into commission. As a mark of his displeasure, and to show publicly what little reliance he could place in the new appointment, the Chancellor was wont to indulge in an occasional absence from his court, and call Mr. Justice Buller from the King's Bench to be his substitute. The suitors certainly were not damnified by this arrangement, for there could not be found another in the range of the courts more thoroughly imbued with all the principles of law and equity; but the motive that prompted the choice argued a littleness, from which one would have thought the manly mind of Lord Thurlow should have been free. These exhibitions of a rude distaste for Arden continued with little mitigation down to the abrupt dismissal of their author. When a messenger once went with his honour's respects and regrets that he was too ill to sit at the Rolls, the superior judge demanded in a voice of thunder, "What ails him?" "Please your

* Twiss's Life of Lord Eldon.

lordship, he is laid up with the English cholera." "Let him take an act of parliament,"—retorted the ungracious Chancellor, with one of those amiable wishes for his organs of vision, in which he was in the habit of indulging,—"let him try to swallow that, there is nothing so binding!"*

The displeasure of the Chancellor had rolled over the head of Mr. Arden as counsel on an earlier occasion with a point of sarcasm that might have destroyed his professional prospects. He had given some provocation, having argued some legal point with great fluency, but very loosely and without due preparation. When his junior, Mr. Scott, rose on the same side, Lord Thurlow, with his usual gravity of manner, said, "Mr. Scott, I am glad to find that you are engaged in this cause, for I now stand some chance to know something of the matter." The buoyancy and real merits of the advocate could support even a rude shock like this, though he remained the reverse of a favourite to the last.

Had Sir Richard Arden retaliated in his own court, or indulged the feelings of resentment which such petulance might have naturally called forth, he would have found some excuse in the great provocation he had sustained; but he would have afforded the unseemly spectacle of two wrangling judges, than which nothing could tend more effectually to degrade the persons, or lower the tone, of those concerned in the administration of justice. It is highly to his credit that he avoided all display of angry feeling; that he spoke of the decisions of the Chancellor with the utmost respect; nay more, when Thurlow's conduct was arraigned in the House of Commons, with some appearance of justice, for obtaining the reversion of a sinecure place, that he spoke in vindication of the transaction with all the warmth of a friend. In private he was accustomed to make the growling of the old lion a subject of pleasantry. Having the misfortune during a journey to be stopped on Finchley Common, and robbed of his watch and chain, he complimented the highwaymen on their gentlemanly bearing. "They asked me," he told his guests, "if my watch was a family piece, but unfor-

* Green's Diary of a Lover of Literature.

tunately it was not, and generously gave me a guinea, out of some few I had in my purse, to bear my expenses to London. I came off second-best, as usual, in an affair of the purse and seals, but they can no longer make any impression."

The decisions of Sir Richard Arden in the Rolls Court gave much greater satisfaction to professional men, to suitors, and to the public in general, than might have been anticipated from the disparaging manner, in which his pretensions for the office had been resisted. Contrary to the predictions of his detractors, the number of appeals was not greater than in the time of Sir Lloyd Kenyon, his immediate predecessor. They were calculated at seven per cent., an inconsiderable amount; nor were the reversals of his judgments more numerous. In the great majority of instances the Chancellor decided in favour of his decrees. The relative amount of business in his court continued to increase with the increase of commerce and population, especially injunctions to restrain the working of mines, motions arising from the intricacy of mercantile transactions, and the unsettled state of theatrical concerns, the increase of public companies, and, what gave rise to more litigation than any other source, the doubtful meaning of disputed wills. On the painful necessity, which his duty as an equity judge imposed upon him, of cutting knots that no subtlety could untie, and interpreting meanings which the unskilful persons who used them, from the mistaken adaptation of legal words, and their inartificial handling of the terms of art, would have found it difficult to explain, he would not unfrequently dilate with much force and feeling. "I am, at last," he would say, "under the very disagreeable necessity of giving judgment upon a case, in which the judgment cannot be satisfactory to the court, and by which I must be sure I am not performing the intention. The testator, it appears, must have totally forgotten the whole state of his property."* He pointed out remedies for

* On one occasion the counsel said, that it was the duty of the court to find out the meaning of the testator. "My duty, sir, to find out his meaning!" exclaimed Lord Alvanley. "Suppose the will had contained only these words, '*Fustum funnidos tantaraboo.*' Am I to find out the meaning of his gibberish?"

part of the mischief, which have since, at the distance of nearly half a century (such is the tardy pace of legislative improvement), been incorporated into our law.

"I really think the legislature should forbid the ecclesiastical court to grant probate to an infant. The ecclesiastical judge told me the spiritual court always do grant it, because they conceive, if it was refused, the Court of King's Bench would compel them, by a mandamus, to grant it. I asked whether a mandamus ever had been granted for such a purpose; but I do not find it ever has. It is absolutely necessary that the legislature should come to some regulation as to the form requisite for wills of personal as well as real estate, from the habit the spiritual court has got into of granting probate of all the loose papers that can be found, and sending them to the Court of Chancery to be construed." In one case, indeed, that of Mr. Thellusson, the court had no doubt or difficulty to grapple with in decyphering the intention of the testator,—for the resources of skill and science had been exhausted in expressing his will and meaning accurately,—but that intention was so cruel, so clearly evasive of the equity of the law, to work an injustice on the living, and gratify the cold avarice of the dead, that the sober judgment of the Master of the Rolls might, perhaps, have been unconsciously overcome by the dictates of his feelings, had he stepped aside for a moment from the path of precedent, and the stern principle of duty.

The case is of such general interest, having effected a most important alteration in the law of devise, and of such dramatic effect from the insight which it gives into the eccentricities of human nature, that we shall preface, with a short history, our analysis of the judgment which he pronounced upon it.

Mr. Thellusson was born at Paris, of Swiss parentage, his father being a minister from Geneva to the French court. He settled in London, as a merchant, at an early age; was naturalized, and, on the foundation of a fortune of 10,000*l.*, raised by his skill and industry a princely revenue. He was generally respected, and, though a severe economist, lived in a style suitable to his wealth. He had three sons, all of

whom were members of parliament, a circumstance in which he took much pride and pleasure. They married each with his entire consent, and were all fathers of families. Living with them on terms of the most perfect amity *, at the age of sixty, in the full vigour of his faculties, he caused a will to be prepared, the most extraordinary and artful composition of cold-blooded cupidity that the annals of avarice can furnish. After leaving comparatively small legacies to the members of his family, the document continues:—

"The provision which I have made for my three said sons, and the very great success they have met with, will be sufficient to procure them comfort, and it is my earnest wish and desire that they will avoid ostentation, vanity, and empty show, as that will be the best fortune they can possess." Effectually to cut them off from having any other, or benefiting in the slightest degree by his death, Mr. Thellusson then directs, "that all his property, real and personal, shall be converted into one common fund, to be vested in the hands of trustees, and that the rents and profits shall accumulate during the lives of the testator's sons and grandsons, and their issue," thus allowing no power of alienating either capital or income, but locking the whole in one vast mausoleum for several generations after his death.† Contemplating the probability that an appeal might be made to the Parliament, or the judicature of the country, to cancel this ambitious fraud upon his children, he directs, with the notion of conciliating their favour, that in case of failure of male issue, the money shall be applied to the use of the sinking fund,

* We have been assured, on good authority, that he had taken umbrage at the expensive habits of his sons; but the motive commonly alleged, though possibly without any valid foundation, for his conduct, was the wish to give time for the heirs of persons guillotined during the French revolution, many of whom had confided their property to his keeping, to make their claims. We are indebted for the following anecdote to Mr. James Smith, one of the authors of the Rejected Addresses.—Mr. Thellusson had built a magnificent house in Philpot Lane. The late Earl of Mulgrave was dining there about the time that Peter Pindar's satire on George the Third's wondering how the apple got into the dumpling was the topic of conversation. "To my mind," said the Earl, "it seems a much greater wonder how this house got into such a lane."—*Law Magazine.*

† Hargrave's Collectanea Juridica.

in such manner as shall be directed by act of parliament; and adds, "As I have earned the fortune which I now possess with industry and honesty, I trust and hope the legislature will not in any manner alter my will, or the limitations thereby created, but permit my property to go in the manner in which I hereby dispose of it."

The offer, in a certain contingency, to effectuate a great public good, appears to have been too remote and improbable an event to have entered seriously into his contemplation, all his sons having large families; but he foresaw that such a daring experiment on the latitude of executory devise would be questioned, and sought on extrinsic grounds to gain that favourable hearing which the document itself, he must have been conscious, could not afford him. A bill was filed on the part of the widow and children to have the trusts of the will declared void, the real estate conveyed to the eldest son as heir at law, and the personal estate divided among the plaintiffs according to the Statute of Distributions. The money at stake, which the will sought to accumulate, was estimated at the round sum of 600,000*l.* Mr. Morgan, the actuary, calculated the accumulation—limiting it to seventy-five years, the shortest probable period at which the fortune might be alienated—at 27,182,000*l.*, sufficiently immense, but which he thought it not unlikely would prove considerably inferior to the sum to which it would be found to have accumulated, as well from the improvement of money at a higher rate, as from the lengthened duration of the last survivor's existence. It was reckoned by Mr. Hargrave, that if there were three descendants to take, each would have an income of 650,000*l.* a year, if one only, above 1,900,000*l.* a year, more than double his Majesty's civil list revenue. The floating vision of so much wealth, beyond ducal or royal aspirations, and the yearning for posthumous grandeur, even in the third or fourth generation, must no doubt have often visited the testator in his day-dreams, have produced a sort of monomania, and steeled his heart to the proscription of his children. For the determination of a cause so novel in its circumstances, and involving considerations of immense importance, the Lord Chancellor Loughborough (a new king

had arisen in the realms of Chancery, to whom the Master of the Rolls was not unknown) called in the assistance of Sir Pepper Arden, Mr. Justice Buller, and Mr. Justice Lawrence, before whom the question was argued for several days, with all the learning and eloquence its magnitude demanded, and the talents of such advocates and lawyers as Scott, Mitford, Grant, Plumer, and Hargrave could supply. It was earnestly contended by the counsel for the plaintiffs, that trusts to accumulate three vast landed fortunes, for three future male descendants, were contrary to public policy, and not fit to be executed by an English court of equity; that the executory devise was excessive, the posthumous accumulation excessive, and consequently void. As this was a cause against a last will, with every body interested to overturn it, with nobody really interested to preserve it, they ingeniously contended that the court could commit no substantial injustice, but the reverse, by treating this as an intestacy, and ordaining a resulting trust for the widow and children of the testator.

Against such a testator the maxim of our law should be as expressed by Bacon: "Verba fortius accipiantur contra proferentem." But however subtle and popular such reasonings might be in the particular case, they could not prevail against the clear and definite rules of equity, which know no distinction of persons, and acquiesce in no doctrines of convenience, whether the property in dispute be one hundred pounds or one million. Previous decisions had established that a testator could direct the rents and profits to accumulate for the period during which he might direct that the title should not vest, and the property remain inalienable; and that with whatever reluctance the Court might arrive at the conclusion, to the conclusion it must come at last, that the period had not been so exceeded as to render the trusts void. After two elaborate judgments from the common law judges, the Master of the Rolls delivered his opinion, according in the main with theirs, and no less distinguished for sound sense than for a right application of the rules of equity:—

"A most novel, and dangerous rule of construction has been attempted to be applied to this case: that a will is to be affected

on account of the unmeritorious object in the view of the testator. It was very ably and ingeniously, but not, I think, solidly contended, that, whatever may be the rule as to wills in general, the court ought to endeavour to defeat the object of this will, as unworthy of the countenance of the court of equity, and that it is the rule of the court to adapt the construction of a will to a view of the merit or demerit of the intention. If it is supposed that the intention is to be collected in a different manner as to a will that meets with the approbation of the court, and a will that the court disapproves, I deny that; I know only one general rule of construction, equally for courts of equity and courts of law, applicable to all wills, which the courts are bound to apply, however they may condemn the object. The intention is to be collected from the whole will taken together. Every word is to have its effect, every word is to be taken according to the natural and common import; and if words of art are used, they are to be construed according to the technical sense, unless, upon the whole will, it is plain the testator did not so intend. The court are bound to carry the will into effect, provided it is consistent with the rules of law. Another rule must be added: that, if the court can see a general intention consistent with the rules of law, but the testator has attempted to carry that into effect in a way that is not permitted, the court is to give effect to the general intention, though the particular mode shall fail. The number of lives is not material.

"Until the argument of this case, such a notion never occurred to any lawyer; nor can it be supported, unless the doctrine that has been contended for prevails, that in every case the court is not to look for a general rule, but for particular instances, in which the rule has been acted upon, and is to go no further. There is no such rule; it is contrary to the first principles of judicial determination, and would vest a most dangerous power in the judges, a power which no judge would wish to possess. The judges are to declare the law, not to make the law. If an inconvenience arises, the legislature, not the judges, must apply the remedy. Nothing can show the dangerous consequences of arguing upon convenience and inconvenience more than the argument of this case. It is said the judges ought to stop where their predecessors have stopped; that is, at three lives. The consequence would be, that the discretion of the last judge who decided such a question must guide the discretion of all succeeding judges, and the judge who extended the limits to three lives might with equal reason, as your lordship is now urged not to go further, have been

urged not to go beyond two. It was never supposed, that however great the mischief might have been which had arisen from gifts to charitable purposes, therefore the judges had a right to prevent them. According to this argument, the Statute of Mortmain, and all the other statutes upon that subject, were not necessary; the judges might have applied the remedy. It never entered into the mind of any judge, however he might disapprove the particular devise, that he might, upon grounds of policy or convenience, subvert the rules that had been established. I remember a case upon the Statute of Mortmain—commonly though not properly so called—before a predecessor of your lordship, who called the intention of the testator, in that case, a pillar of vanity. That intention did not deserve the title so well as the object of this testator. In that case the Lord Chancellor said, if the law permitted the erection of such a pillar, he must, however reluctantly, lay the first stone. That, I fear, must be your lordship's opinion, if you think this devise and bequest in point of law good."*

In this judgment the Lord Chancellor reluctantly acquiesced, recommending an appeal to the House of Lords, who, in 1805, affirmed the decision. But to prevent such a morbid grasp of property in future, Lord Loughborough introduced and carried a bill, with the unanimous assent of both branches of the legislature, 39 & 40 Geo. III. c. 98, restraining dispositions by way of accumulation to the life of the settler, or twenty-one years after his decease, or the minority of any party living at the time of his decease. We feel now, at the distance of nearly fifty years, almost gratified at the knowledge that the accumulated mass of wealth is likely to fall far short of the amount which fanciful calculators had predicted, and that, as it has conferred no happiness on those who were of right entitled to it, the to him unknown heir will not, as Mr. Thellusson vainly thought, derive any surpassing splendour, or overtop the fortunes of other millionaires; a just requital of that insane ambition, that—

> ——————————— "dementia, quæ nec
> Noscit verba sua, uxoris nec vota, nec illos
> Quos genuit, quos eduxit; nam codice sævo
> Hæredes vetat esse suos: bona tota feruntur
> Nummi ad congeriem. Tantum valet halitus auri."

* Thellusson v. Woodford, 4 Ves. 328

The last act of Mr. Pitt's administration, on his retirement in 1801, was to raise Sir Richard Arden to the chief seat in the Common Pleas, vacant by the promotion of Lord Eldon to the Seals. His own place in the Rolls Court, which he had filled for twelve years, was supplied by Sir William Grant, the model of a perfect judge. Lord Eldon has cordially acknowledged the large measure of praise to which Sir Richard Arden was entitled as an equity lawyer, admitting at the same time that, from political hostility, (and perhaps in some degree from the Chancellor's personal prejudice,) full justice was rarely done to the Master's learning and talents.

The new Chief Justice of the Common Pleas received at the same time the distinction of a peerage, and chose his title, Alvanley, from a manor in the parish of Frodsham in Cheshire, of which his ancestors had been lords under the Earls of Arundel. This grant of an English barony excited the loud indignation of Mr. Bentham, who protested stoutly, in his own peculiar style, against these feathers of nobility being appended to the tails of the principal judges of the Court of Common Pleas as well as King's Bench, but his indignation seems to have been so little reciprocated by men in power, that the precedent has been extended by modern administrations to other courts, and decorated the Chief Baron of the Exchequer and the Master of the Rolls (removing this almost hereditary officer from the House of Commons) with the same plumage. On the score of fortune insufficient to sustain the proper splendour of a peerage this acceptance of a title has been blamed by his more prudent predecessor, Lord Eldon; but Lord Alvanley was not a man of calculating habits, and might just feel that he had inherited a claim of admission into the House of Lords. In the course of nature he might expect to occupy the judicial bench for many years, and with the patronage annexed to his place, might not unreasonably hope to raise an ample provision for an eldest son.

In his last office, Lord Alvanley gave great and general satisfaction, greater, probably, than in any of the preceding appointments. He had a short tenure of office indeed,—less than three years,—but during that period both his trials of

causes and judgments in banc exalted the regard of those competent to form a sound judgment to a much higher degree than formerly for his talents and learning as a lawyer. The court, we are assured, was in his time filled with suitors; and his decisions, even in the most difficult cases, met with general approval. In points of evidence, especially, he threw down the gauntlet with success even to Lord Kenyon. He declared, against the opinion of that learned judge, that it would be a most dangerous doctrine to say that the improper conduct of a husband licensed another to invade his rights, and Lord Alvanley's decision has been confirmed by succeeding authorities. The indignation with which he refused to receive the evidence of Mrs. Sandon, when that lady, who had been divorced from Mr. Twisleton, was put into the box to speak against her former husband, is highly characteristic:—

"Was a wife, who could not be a witness against her husband, to be allowed to make herself one by her own disgraceful conduct? Was a woman, divorced for her adulteries, to be admitted in a court of justice as the accuser of her husband, by divulging facts she only could know as his wife? To what monstrous consequences would such a doctrine lead? If women, after they were divorced, were to be permitted to state on oath all they knew of their husbands, sure he was it would terrify our modern young gentlemen from ever asking the legislature for divorces."

If this had been all the damage, little mischief would have accrued from the admission; but higher evils were involved in this attempt to violate the sanctity of domestic confidence, which justified the judge's warmth. His irritability of temperament sometimes exploded in angry altercations with the band of serjeants; on one occasion in particular, when he alleged, by mistake, that brother Best was urging a motion the object of which was to impose upon the court; but it must be acknowledged that he had refractory brethren to contend with, and that some of the serjeants wagged their tongues with even more than the wonted licence of seniority. His quickness of apprehension often exposed him to the censure pronounced by Bacon on Judge Hatton, "of affecting the opinion of poignancy and expedition, by an impatient and catching hearing of the counsellors at the bar." To his

facility of disposition might also be ascribed the occasional absence of judicial gravity, the want of stately bearing and precision, both in ideas and speech, which the station of Chief Justice seems to demand. The simile of grave as a judge, could not have been borrowed from his deportment, for he would laugh as merrily as Chancellors used in the olden time to dance. He would now and then talk in a slip-shod manner, as if sitting in an arm-chair and presiding over a free-and-easy club. Of this deportment a singular instance was mentioned by the late Mr. Whitbread, when arraigning Lord Melville at the bar of the House of Lords.

"It was not long since Lord Alvanley was trying a cause in this hall, and an act of parliament was in question. A learned serjeant quoted a particular section of the act; Lord Alvanley said there was no such clause in the act.

"'Why but, my lord, here it is,' said the serjeant.

"'Never mind, I tell you I know it is not there,' retorted the judge.

"'I beg your lordship's pardon, but here it is in the book; read it.'

"The learned judge at length took the book, and having read it, exclaimed—

"'Oh true, here it is sure enough, as sure as God is in Gloucester.'" *

This rather flippant style and conversational mode of speech the learned judge seems to have acquired in the evening sittings at the Rolls. He would there discourse of preceding and cotemporary judges in the following off-hand manner: —

"Lord Macclesfield always found fault with what his predecessors had done, but always went as far as they did. I strongly protest against the argument used by the learned judges in Cooke versus Booth (Cowper, 819), as to construing a legal instrument by the equivocal acts of the parties, and their understanding upon it, which I will never allow to affect my mind. That case was sent to law by Lord Bathurst. The learned judges thought fit to return an answer to the Chancellor, that the legal effect was a

* State Trials, vol. 29. Swift in one of his verses upon Whiston writes—

'Who prov'd, as sure as God's in Gloucester,
That Moses was a great impostor.'

perpetual renewal, upon the ground, that by voluntary acts, which the parties might or might not have done, the parties themselves had put a construction upon it. Mr. Justice Willes stated that as his only ground. Lord Mansfield made it his chief ground; but that ground was disapproved by Lord Thurlow, and is, I think, totally unfounded. I never will construe a covenant so. I never was more amazed; and Mr. Justice Wilson, who argued it with me, was astonished at it. When it came back, Lord Bathurst not having retained the Great Seal long enough for it to come again before him, it came before Lord Thurlow, who said, that, sitting as Chancellor, when he asked the opinion of a court of law, whatever his own opinion might be, he was bound by that of the court of law; therefore he decreed a renewal, but said he should be very glad if Mr. Booth would carry it to a superior tribunal. We had a consultation; and I wrote to Mr. Booth upon it; but he, being only tenant for life, refused to appeal. There stands the case of Cooke v. Booth. Baynham v. Guy's Hospital, 3 Ves. 298."

It would savour of undue panegyric to rank Lord Alvanley among our great English judges; that he occupied a highly respectable second place, is the just tribute of truth. To his honour be it remembered, he invariably exceeded, in his several translations, the hopes that were entertained of him, and never seemed more worthy of the advanced post, than when on the point of quitting it. He was always, "par negotiis neque supra;" or, in the language of an excellent painter of character, "too great for a little praise, and perhaps too little for a great praise." In the course of nature it might have been expected that he would preside long over the court which he ruled so well. Few situations could be more conducive to length of days than the easy duties of the Common Pleas, which, whilst Lord Alvanley presided there, rose at regular and early hours; had just work enough to assist digestion, and demanded no fatigue or effort of body or mind. In a dialogue between such a judge and the bishop of a small diocese, Sir John Barnard might well discourse on the comforts of old age. But the constitution of the chief justice was originally weak, and a mortal illness seized him unawares. He was in the House of Lords, where he sometimes presided as Speaker, on Friday, March 16th, when an agony of pain compelled him to quit the woolsack, and to

be supported to his own house in the immediate neighbourhood, George Street, Westminster.* The skill of his medical attendants was unable to subdue the violence of the attack,—inflammation of the bowels; and on Monday, the 19th March 1804, he expired. His body was interred in the Rolls Chapel, near the remains of Sir Joseph Jekyll.

In private life Lord Alvanley appears to have been an object of general affection and esteem. The absence of all pretension and reserve, which made his appearance in public to be as it were in undress; his openness and simplicity; the warmth with which he espoused the interests of his friends; and the heartiness which he threw into all social pleasantries, could not but place him high in favour with the domestic circle. "*J'aime ce joli musique*" seemed to be his motto, even when his own peccadilloes or mishaps might form the subject of merriment. His manners were neither flippant nor inelegant in private society. He had an exuberance of spirits; and his conversation is described to have been so entertaining, that Pitt rarely dined at a party when Arden was there, without making a point of sitting next to him at dinner. We may well fancy how much the minister, who generally spoke in the state-paper style, and conversed in periods, diffident, proud, and reserved, must have enjoyed the force of contrast in his rattling, careless negligence, and that the discords, taken together, "discoursed most eloquent music." With such a companion—we are assured by one who knew Pitt intimately well—free from shyness, and throwing off restraint, he was the wittiest companion and soul of merriment; "one of a joyous party who went to spend an evening at the Boar's Head, Eastcheap, in memory of Shakspeare, the readiest and most apt in the required allusions." How little could members of the House of Commons imagine that the precociously grave premier, who strode to his seat with chin erect and haughty sternness, could, with his friends, be guilty of sowing garden beds with the fragments of a friend's dress

* His country house was in Southwood Lane, Highgate. He was a regular attendant at Highgate Chapel. Boasting to Sir Edward Law of his constant church-going in the country, the Attorney-General, in his surly mode of banter, growled a reproof 'as if there was no God in the town.'—*Law Review.*

opera hat, or, armed with bill hooks, cutting avenues through the coppice, and making the woods ring again to the merry laugh of the woodman. It required the revelations of Lady Stanhope, the memoirs of Wilberforce, and the diaries of Lord Malmsbury to make posterity render a tardy justice to the social excellencies of Pitt.

The great failing of his friend was a quick and hasty temper, which went far to justify the Frenchman's translation of his name—"*Mons'. Poivre Ardent.*" He sometimes suffered this irritability to prevail, not only when sitting as a judge, but in the recesses of his family. A friend of his was startled one evening when the domestics, according to custom, had been summoned to attend prayers read by Lord Alvanley, by his suddenly pausing, and calling out, "Will no one stop that fellow's damned fiddling?"* One of the servants, it appeared, had remained behind, and was amusing himself in a more agreeable manner than at the family devotions. But his master carried anger as the flint bears fire, the spark went out the moment it had kindled, and the kind-hearted judge bore no resentments. Had it not been for the adventitious hostility of Lord Thurlow, he might have passed from youth to age without an enemy. Though some might sneer at his success, and call him the child of fortune, none could describe him as *l'enfant gâté*, for he retained through all the phases of life his original natural character. Wilberforce was moved to tears on hearing the sudden tidings of his death; and politics could not fill up, in the late premier, though preparing eagerly to resume office, the aching void for his loss, for his heart had gone out to meet him. He was succeeded in his title and estates,—would they had been larger,—by his son William, the present Lord Alvanley, who well represents the kindliness, urbanity, and wit of him by whom the nobility of the family was revived.

* Gentleman's Magazine.

CHAPTER V.

THE LIFE OF LORD CHANCELLOR LOUGHBOROUGH.

THE fame of an eloquent advocate is scarcely less evanescent than that of a favourite actor. They both fret the busy hour on the stage of public favour, are rewarded for their exertions with ready plaudits, and realize the poet's wish, "virum volitare per ora." But no sooner has the popular tragedian made his farewell bow, than his fame dwindles into narrow limits; and even the Bettertons or Booths of the day derive a precarious immortality from the traditions of partial contemporaries. Nor, except in the immediate precincts of Westminster Hall, is the public mind more retentive of the merits of the advocate, who was once most eagerly sought after by anxious suitors, whose triumphs found their daily tribute in the newspapers, and who moved juries by his nod. The names of Wedderburn, Loughborough, and Rosslyn, once familiar to the ear, are now becoming forgotten sounds, and it is with a cold interest only that the general reader can be expected to peruse his life. Yet was he distinguished at an era, when distinction could not be won unless by rare desert over such rivals as De Grey, and Thurlow, and Dunning; and he has left a reputation for acuteness, versatility, and eloquence, which may vie with that of any of the fortunate holders of the great seal, from a Shaftesbury to a Brougham.

Alexander Wedderburn was the eldest son of Peter Wedderburn, of Chesterhall, Esq., well known as a shrewd lord of session under the title of Lord Chesterhall, by his wife Janet, daughter of Colonel Ogilvie, and descended from a race as ancient and noble as the proudest Scot could desire,—Walter de Wedderburn, his ancestor, being one of the belted barons who, in 1296, swore fealty to King Edward I. for the lands which he held in the county of Berwick, and which

barony had been in possession of the family from the reign of William the Conqueror.

Among their leading men, deputed by the Scots, in 1640, to confer upon the subject of their demands with the English commissioners, were the Earl of Dumfermlin, Sir Patrick Hepburn, and Mr. Alexander Wedderburn, Lord Chesterhall's father, the third son of Sir Peter Wedderburn, lord of Gosford in Mid Lothian, was one of the commissioners of the royal revenues in Scotland. Lord Chesterhall himself was the proud father of two sons, who distinguished themselves almost equally in their respective professions; the younger, making a choice of the army, was sent out as a cadet to India, acquired rapid promotion, was honoured with the friendship of Lord Clive, rose to the rank of general, was appointed governor of Madras, and fell at the siege of Broach. The elder son, Alexander, attained still greater distinction as a civilian, and was born in Edinburgh on the 13th of February 1733, and educated at the university there, where he distinguished himself among the boy-students more for acumen than assiduity. To the *humanities*, as they are called *Scoticè*, and the study of the civil law — proofs of his proficiency in which may be traced in his decisions — he directed his chief attention; and was admitted a member of the faculty of advocates at the early age of twenty-one. Edinburgh was at this time renowned for its literary clubs. Wedderburn readily gained entrance to the most distinguished of these, the Select Society, which had for its founder Allan Ramsay, son of the author of the Gentle Shepherd, and appears to have been instituted as well for philosophical inquiry as for the improvement of members in the art of public speaking. Sir Alexander Dick, Wedderburn, Pringle, afterwards a lord of session, Lord Kaimes, and Lord Elibank, were the chief orators; Hume and Adam Smith among the silent members. It became the fashion for men of rank to intercommune with metaphysicians, and the club soon numbered among its patrons and frequenters the Dukes of Buccleuch and Montrose, Earls Haddington and Bute. Their refinement smoothed and softened even the ruggedness of the great scholar, Dr. Wilkie, who, according to Charles

Townsend's description, approached the two extremes of a god and a brute. These meetings of easy but improving sociality rubbed off the corners of mere learning and science, and thus made the literati of Edinburgh less captious and less pedantic than those of any other place. So, at least, assured his hearers, with a complacency in which all participated, the gentle Henry Mackenzie, when reading an essay, rich with early recollections, to the Royal Society of the modern Athens. Another pupil of the porch has given an equally eulogistic, and more particular, account of this admirable academy. "The Select Society," says Lord Kaimes, "was instituted in 1754, and, though soon more numerous and promiscuous than its title warranted, included most of the men of letters at that time resident in Edinburgh and its vicinity. The purposes of the institution were literary discussion, philosophical inquiry, and improvement in public speaking. The meetings were held weekly during session time, at an early hour on the Friday evenings, in one of the inner apartments of the Advocates Library, a place peculiarly suitable for those local associations, which it could not fail to suggest to the mind. The society subsisted in vigour for six or seven years, and produced, to use the words of Professor Stewart, debates such as have not often been heard in modern assemblies, debates where the dignity of the speakers was not lowered by the intrigues of policy or the intemperance of faction, and where the most splendid talents that have ever adorned this country were roused to their best exertions by the liberal and ennobling discussions of literature and philosophy. Young Wedderburn was a principal figure both in the written and spoken oratory to which this institution gave rise. In the end of the year 1754," continues Lord Kaimes, "a few men of talents, who came afterwards to take a distinguished place in the literary world, projected the plan of a Review to be published at Edinburgh, which, whilst its principal object was to give an account of the progress of Scottish literature, should occasionally take notice of such other works, either English or foreign, as seemed best entitled to the public attention. The chief conductors were Smith, Robertson, and Blair. Two numbers only were published, in

July and December, 1755, when the censure they most justly bestowed on some fanatical preachers excited such an outcry, that a regard for the public tranquillity, and their own, determined the reviewers to discontinue their labours. The preface to the Review, which contains the plan of the journal, was written by Mr. Alexander Wedderburn, the advocate; and a few of the short articles containing accounts of law publications are supposed to be likewise of his writing." This Review anticipated by half a century, both in name, bitterness, and talent, its celebrated successor, and contained, among other excellent criticisms, an admirable article, by Adam Smith, on Dr. Johnson's Dictionary. To the delight of giddy students, and the clever vacant loungers of the outer court, another association of a more convivial character than the Select Society soon sprung up. The Poker Club was instituted at a time of excitement, when Scotland had been refused a militia, and thought herself affronted by the refusal. The Saxon jealousy, which fifteen years had not yet extinguished, of a disaffected spirit of Jacobitism supposed it unsafe to trust a great part of the people of Scotland with arms. The name of this club, the Poker, was chosen from a quaint sort of allusion to the principles it was originally meant to excite as a club to stir up the fire and spirit of the country. Sir William Pulteney was chosen secretary, and Mr. Andrew Crosbie, barrister *assassin.*

These agreeable interludes in the domestic drama naturally prepared the minds of all who took part in them for a larger theatre, and encouraged Home to compose one of the best acting plays upon the stage, the pathetic tragedy of Douglas. We are informed by Mackenzie, that the rehearsals of Douglas in 1755, at the Edinburgh theatre, were attended by that literary party who were the constant companions of the author, and, then, the chief arbiters of taste and literature in Edinburgh,—Lord Elibank, David Hume, Wedderburn, Dr. Adam Ferguson, and others. "The town," says Dr. Carlyle, "was in an uproar of exultation that a Scotsman should write a tragedy of the first rate, and that its merits were first submitted to them."

The cry was caught up in an angry spirit by the religious world, whose fervid zeal prevailed at first, and the supreme judicature of the church, the National Assembly, published a solemn admonition against the danger of frequenting stage plays. Mr. Home was compelled to abdicate his living at Athelstaneford. Mr. White, the minister of Libberton, was suspended for a month; a mitigated sentence, in consideration of his humble apology, that "he had been unwarily led into error; that he attended the representation only once, and endeavoured to conceal himself in a corner, to avoid giving offence!" The heavy artillery of the puritans was answered by a sharp fire of pasquinades. Mr. Wedderburn let off several songs and epigrams, and Carlyle an ironical pamphlet, under the title of "Reasons why the 'Tragedy of Douglas' should be burnt by the hands of the common hangman." Mr. Mackenzie confesses, however, that "the parodies and squibs in verse were, in general, not remarkable for their wit or pleasantry." They had the laugh on their side, and common sense. The fury of fanatical fervour was at length so completely burnt out, the manners of the age so thoroughly vanquished the law of the church, that, during the first visits of Mrs. Siddons to Edinburgh in 1784, while the General Assembly was sitting, "there was," Mr. Mackenzie asserts, "great difficulty in procuring a full attendance of its members, on those evenings when she was to perform."

We have dwelt the longer on these literary, social, and dramatic festivities, which then gladdened the capital of Scotland, as they gave a tone and colour to the mind and studies of young Wedderburn, and exercised an important influence on his fortunes. From their communion he was exiled, luckily for himself, by an unwonted occurrence.

Shortly after commencing practice at the Scottish bar, it was his fortune to be opposed to Mr. Lockhart, at that time a leading counsel. In replying to an impassioned appeal of this powerful opponent, he summed up an ironical picture of Mr. Lockhart's eloquence in these sarcastic terms: "Nay, my lords, if tears could have moved your lordships, tears, sure I am, would not have been wanting." The Lord Presi-

dent immediately interrupted the young counsel, and told him he was pursuing a very indecorous course of observation. Wedderburn maintained with spirit that he had said nothing he was not well entitled to say, and would have no hesitation in saying again. The Lord President, irritated probably at so bold an answer from a junior, rejoined in a manner, the personality of which provoked the advocate to tell his lordship that he had said that as a judge which he dared not justify as a gentleman. The remark was hasty, and not to be brooked. The President threw himself on the protection of his brother justices, and Wedderburn was ordered by the unanimous voice of the court to make a most abject apology, on pain of deprivation. He refused, and threw off his gown. It is reported, we may hope untruly, that Lockhart declined to hold a brief with the unlucky satirist; but whether this refusal hastened his abandonment of the profession or not, it is clear that he acted as a man of honour, and deserves applause for his spirited defence of that, which is the vital principle of the advocate, full liberty of speech.

The road from Edinburgh to London proved to him, as it has done to many of his countrymen, a path to fame and emolument. Aware that the Scotch accent would be a stumbling-block to his success at the English bar, he studied elocution with as much pains-taking diligence as the common law, under the elder Sheridan and Macklin. Mr. Croker, in his edition of Boswell's Life of Johnson, illustrates the passage where this circumstance is mentioned with the following quaint remark: "This is an odd coincidence. A Scotchman, who wishes to learn a pure English pronunciation, employs one preceptor who happens to be an Irishman, and afterwards another, likewise an Irishman, and this Irish-taught Scot becomes (and mainly by his oratory) one of the chief ornaments of the English senate, and the first subject in the British empire." "Though it was too late in life," says Boswell, "for a Caledonian to acquire the genuine English cadence, yet so successful were his instructors and his own unabating endeavours, that he got rid of the coarse part of his Scotch accent, retaining only as much of the native wood-note wild as to mark his country, which, if any

Scotchman should affect to forget, I should heartily despise him!" This honest burst of patriotism is worthy of the "canny Scot;" yet at this very time the Select Society in Edinburgh were undertaking the hopeless task of refining their language from the vernacular idiom, and identifying it with English in purity and pronunciation. Sheridan was appointed lecturer; but he succeeded better as tutor of a young lawyer than of the nation. Though partially cured of the Scotch, Wedderburn never fully mastered the English, accent. His Scotticisms and his vernacular tones returned, as his vigour was impaired in the decline of life, showing that it was all the while a painful effort, which could not continue when the attention was relaxed, and its powers enfeebled. He was, throughout, more conscious of the defect than his friend Dr. Fordyce, who boasted of being the only Scot that had entirely lost his native dialect, asserting this in the broadest Scotch it could be spoken in.

The stirrings of ambition were not yet strong enough within Wedderburn to feel

> "the spur that the clear spirit doth raise
> To shun delights, and live laborious days."

The fondness for literary society which Edinburgh had fostered was enhanced by the wider circle of London, to whose symposia, in consequence of his literary acquaintance and the patronage of Lord Bute, the aspiring lawyer was at once introduced. They comprehended his brother-in-law Sir Harry Erskine, Mr. Robert Adams, Mr. Garrick, Mr. Douglas, afterwards Bishop of Salisbury, Sir Gilbert Elliot, Mr. John Home, Doctors Armstrong, Smollett, Pitcairn, and William Hunter. They formed a club at the British Coffee-house, of which the then mistress was a woman of lively talents and the most agreeable conversation, — Mrs. Anderson, sister of Dr. Douglas. The drama was then at its zenith, and Wedderburn's intimacy with Macklin and Sheridan introduced him to the green-room, whose society had a fascinating charm for a youth of wit and sprightliness. For dramatic performances he retained a vivid partiality to the close of life, and in maturer years might be nightly seen at the theatre, which then

united attractions it would have argued insensibility to resist—the noblest characters of Shakspeare personated by Kemble and Siddons. Of this fellowship with players, Cumberland, in his Autobiography, gives the following instance. "The play of the Wishes, under the auspices of Lord Bute, was privately rehearsed at Lord Melcombe's villa of La Trappe. It was a beautiful summer evening when it was recited on the banks of the Thames by O'Brien, Miss Elliott, Mrs. Haughton, and some few others, under the management of Foote and Murphy, who attended on the occasion. At this rehearsal there was present a youth, unknown to fame, who was understood to be protected by Lord Bute, and came thither in a hackney-coach with Mrs. Haughton. This gentleman was of the party at the supper with which the entertainment concluded; he modestly resigned the conversation to those who were more disposed to carry it on, whilst it was only in the contemplation of an intelligent countenance that we could form any conjecture as to that extraordinary gift of genius, which, in course of time, advanced him to the great seal of the kingdom, and the earldom of Rosslyn."

But, unlike Murphy, Payne, and other professional friends, who suffered the drama to seduce them from the law, the future Chancellor, as soon as his probationary course for the bar had expired, ceased to be the mere bon vivant and man of letters. He was successful, but, as a consequence of success, was ere long assailed by a shaft of satire in the Rosciad, a keen poetical libel on all connected with the drama. It supposes that

> "Roscius deceased, each high aspiring player
> Push'd all his interest for the vacant chair;"

and introduces Wedderburn as advocating the claims of Murphy to that perilous eminence:—

> "To mischief train'd e'en from his mother's womb,
> Grown old in fraud, though yet in manhood's bloom,
> Adopting arts by which gay villains rise,
> And reach the heights which honest men despise,
> Mute at the bar and in the senate loud,
> Dull 'mongst the dullest, proudest of the proud,

A pert prim prater of the northern race,
Guilt in his heart and famine in his face,
Stood forth; and thrice he waved his lily hand,
And thrice he twirl'd his tye—thrice stroked his band;—
At friendship's call (thus oft, with traitorous aim,
Men void of faith usurp faith's sacred name,)
At friendship's call I come, by Murphy sent,
Who thus by me developes his intent."

The player's friend thus virulently assailed must have thriven well, on being transplanted, to be a worthy mark for such bitter satire. He had been admitted of the Inner Temple, 8th May 1753, and was called to the bar on the 25th of November 1757. He started on his professional career in the Court of Chancery, with the advantage of having some powerful friends and connexions. His sister had married Sir Harry Erskine, an intimate friend of Lord Bute, to whose patronage he thus gained an early introduction. Nor was he too proud to canvass for support from men of inferior rank. In that delightful book just referred to, Boswell's Life of Johnson, we find it related in conversation by the printer Strahan, that his countryman, when first making his way at the bar, solicited his influence to get him employed in city causes. The downright doctor, being asked his opinion on the propriety of such conduct, as a matter of professional etiquette, declared "I should not solicit employment as a lawyer, not because I should think it wrong, but because I should disdain it." The sturdy moralist was a stranger to professional etiquette, and its traditional, unwritten rules of honour by which gentlemen are bound, or he would at once have admitted that the practice was morally wrong beyond all dispute or question, as giving an unfair advantage to the unscrupulous over the high-minded practitioner, and tending to the degradation of the bar in the person of an unworthy member. There can be no doubt that any canvassing for briefs is alien from the sensitive spirit of professional delicacy. It procured, however, for Wedderburn the conduct of one or two causes, which displayed his facility of words and readiness, the nice tact and subtle judgment with which he could wind the mind of the court, in so favourable a light, that he became,

after a few terms, the sued-for by retainers instead of the suer. With more discretion, and far less law, than his rivals, who were too learned as pleaders or equity draftsmen to regard elocution, he studied the art of becoming a graceful and fluent speaker; and had such success, that words were said to glide from his lips in unbroken periods like smooth streams. He had the excellent gift of saying just enough, and of appearing always to bear in mind what many an erudite pleader forgot, "caput artis est decere." His pronunciation was distinct, though somewhat affected from an anxiety to avoid Scotticisms; his emphasis well placed, and his voice skilfully managed. He excelled in detail, and conveyed a number of minute facts to his auditors in a clear, unembarrassed, comprehensive manner. As a sure test of success, his income in a few years exceeded Thurlow's, the *senior wrangler* of the court.

His manner in earlier life, we learn from an admirable professional critic, was remarked as excellent, though it probably partook, even then, of that over-precision which in his later years sometimes bordered upon the ridiculous.

The same high authority* relates an extraordinary instance of the unscrupulous means by which this daring lawyer adventured on business. A similar attempt would now, we rejoice to know, consign all parties engaged in it to Coventry. "Upon the removal of Sir Fletcher Norton he joined the Northern Circuit, having then the rank of king's counsel. As this was contrary to all the rules of the profession, and was indeed deemed to be a discreditable proceeding, as well as a breach of discipline, even independent of other peculiarities attending the operation, (he came there with the same clerk whom Sir Fletcher Norton had before in his service,) an immediate resolution was adopted by the bar to refuse holding briefs with the new comer, a resolution quite fatal to him, had not Mr. Wallace, a man of undoubted learning and ability, been tempted to break it, and thereby at once to benefit himself, and nearly destroy the combination. He drew Mr. Wallace up in his train. He practised in the Court of Chancery, but

* Lord Brougham.

in those days the line had not been drawn, which now, so hurtfully for the equity practitioner, separates the two sides of Westminster Hall, and Chancery leaders frequented the different circuits almost equally with practitioners in the courts of common law. Professional readers may feel a malicious pleasure in learning that his breach of circuit rule was unrewarded with success. Though a very fine speaker, he wanted tact and presence of mind in the conduct of a cause, and was reputed to have so little law as to justify a saying of Jack Lee, who, to the delight of jealous rivals, asserted that 'what little law Wedderburn took in at York, had run through him before he got to Newcastle.' Political topics were far more to his liking than legal studies, and he may be classed, with Perceval and Dundas, among the few eminent English and Scotch lawyers who have shone more in politics than in Westminster Hall. Far from being a profound lawyer, Mr. Wedderburn was only versed in as much professional learning on ordinary subjects as sufficed for the common occasions of Nisi Prius. On peerage law he is believed to have had more knowledge, and affected great acquaintance with constitutional learning.

His strength lay in dealing with facts, and here all his cotemporaries represent his powers to have been unrivalled. It was probably this genius for narrative, for arguing upon probabilities, for marshalling and for sifting evidence, that shone so brilliantly in his great speech at the bar of the House of Lords upon the celebrated Douglas cause, and which no less a judge than Mr. Fox pronounced to be the very finest he ever heard on any subject. "That Lord Loughborough never forgot the Douglas cause, as he was said to have forgotton so many merely legal arguments in which he had from time to time been engaged, appears from one of his judgments in Chancery, where he imported into a cause before him facts not belonging to it, but recollected by him as having been proved in the case of Douglas."

Of the ardent vigour and warm personal feeling which Wedderburn threw into this most important and interesting cause, identifying himself throughout with his unfortunate client, though his memorable speech has perished, we have a

remarkable instance in the following letter, flung off to the appellant on reading the report of the adverse judgment.

"My dear Stuart,

"I have read over here the newspaper account of the Chancellor (Camden's) speech in the Douglas cause, which, in my opinion, he has more reason to be offended with than you have. It is the publication of one who had only capacity enough to retain those parts of the speech which, I am persuaded, the Chancellor would wish to be least remembered. Nothing ever was worse founded than any aspersions upon your conduct in that cause, which in its whole progress was carried on, not only with the strictest probity on your part, but with a candour and delicacy that very few men would have thought themselves bound to observe. I have more than once thought, in the course of the inquiry, that you acted with too nice a sense of honour, in a contention with people who made no scruple to take every advantage, though I respected the principle on which it proceeded. It was impossible you could escape abuse (let your conduct be ever so correct) at a time when, for much less interests, all characters are daily traduced, and personal invective is become a standing mode of argument.* I am sorry, upon their own account, that it should be adopted by those who, having felt what calumny is, should be cautious how they give a sanction to it. Upon your own account I feel very little anxiety; because, besides the testimony of your own mind, you have the satisfaction to know, that all those who have been eye-witnesses of your conduct not only justify it but applaud it; that of the many judicious people who have studied the cause very few indeed join in the reflections upon you, and that even your adversaries do your conduct that justice in private which in public they have sacrificed to the interests of their cause. They have succeeded, and the decision must compel our submission; but assent can only flow from conviction; and the opinion I had entertained of the cause is not altered by any reasoning I have heard upon it. My ideas of justice are a little perplexed by the decision; and I consider it as a striking example that no cause is certain or desperate. You will probably be gone from London before I return to it; and I could not help writing to you, as I shall not have an opportunity for some time of meeting you. Adieu, my dear Stuart, and believe me ever,

"Yours, most sincerely,

"A. W."

* Mr. Stuart fought a duel with Mr. Thurlow, who refused to retract, explain, or apologize.

The House of Commons was a natural object of ambition to an enterprising lawyer, courting popularity and conscious of eloquence. Through the influence of his titled friend, he became, accordingly, member for Rothesay, and, when Lord Bute resigned office, in the session of 1761, in compliance with the customary formula of hunters for place, a zealous patriot, a discoverer of abuses, and spirited declaimer against the ministers of the day. The splendours of those great orators, Chatham and Charles Townshend, were just setting, and Burke and Fox had lately risen above the political horizon. It required an intrepid spirit to venture on an assembly warm with the recollections and promises of eloquence, but the young orator knew his strength, and in one of his earliest essays arrested the attention and won the "cheers!" of the house. The Attorney-General, De Grey, having closed a speech advocating some dilatory measures with the well-worn line,

> "Better to bear the ills we have,
> Than fly to others which we know not of;"

Wedderburn instantly arose, and commenced his reply with a continuation of the passage, which told directly against the argument of the law officer of the Crown.

> "And thus the native hue of resolution
> Is sicklied o'er with the pale cast of thought,
> And enterprises of great pith and moment,
> With this regard, their currents turn awry,
> And lose the name of action."

When we take into account the readiness of the retort and appositeness of the lines, the above quotation may be regarded as one of the luckiest turns of debate.

Too many lawyers forget to leave Westminster Hall behind them on entering St. Stephen's Chapel, and fail accordingly. But Wedderburn, with intuitive prudence, threw off from the first the trammels of professional habit; and the "pert, affected, little political prater," as he was contemptuously called by Barré and Churchill, soon expanded into a finished orator. He was always lively; and whether satirical or rhetorical, or argumentative, never vexed the dull ear of drowsy men, or persisted in one strain so long as to fatigue the attention of hearers, often hungry, and always impatient.

In reading the few short specimens that are fortunately preserved of these different manners, the reader must bear in mind the inaccurate and slovenly method of reporting which prevailed at that period. The scrawl of the reporters only aimed at giving the sense of the speaker, without affecting to retain elegant turns of phrase, or bold felicities of expression. "Of all people," said Lord Loughborough, at a later period, "short-hand writers were ever the furthest from correctness; and there were no men's words they ever heard, that they again returned. They were in general ignorant, as acting mechanically; and by not considering the antecedent, and catching the sound and not the sense, they perverted the meaning of the speaker, and made him appear as ignorant as themselves." Their account of the debate is often variegated with such tantalizing notices as "Mr. W. was excessively great this evening;" or, in a manner still more complimentary, "the Solicitor-General, Wedderburn, in answer to Mr. Fox, defended the administration in a fine vein of oratory; and in answer to an observation of Mr. Burke on the conduct of Demosthenes, he entered on classical grounds, and with consummate eloquence and accuracy of recollection descanted on the history of that period, with allusion to the present times. His speech was a restoration to the house, and, though it was three o'clock in the morning, awakened the attention of every man in it." There might possibly be less reason for regret were modern reporters sometimes to adopt this compendious brevity.

Of Wedderburn's ornate style the following extract, in vindication of the Remonstrance of the City of London to the King, during the Wilkes affray, will afford a favourable specimen. "The petitioners may be indiscreet, they may be warm, they may be turbulent; but let us not be rash, unwarrantable, and arbitrary. Let us not, while we are so nicely attentive to the errors of others, rush into palpable illegalities ourselves. Our power is great, but the power of the law is much greater. For this reason, sir, I oppose the motion now before the chair (for a copy of the Remonstrance). I cannot consent that our love for equity should make us inequitable—that our regard for peace should lead us to

spread the flames of discord through the land, nor concur that our solicitude for the safety of the constitution shall vindicate our stabbing that constitution to the heart. Remember, sir, one of the capital blemishes of James the Second's reign was punishing the seven bishops for petitioning. Similar causes must always be productive of similar effects; we are yet safe; it is yet in possibility to retain all; whereas if we proceed from violence to violence — if we go on exercising our power against the sense of our conviction, and sacrifice our honesty to gratify the malignity of our resentment — the consequences must be dreadful in the end. The people may be injured, but they will prefer annihilation to chains; universal anarchy must ensue; and darkness, as the poet forcibly expresses it, be alone 'the burier of the dead.'"

The following eulogium on the freedom of the press shows the hand of a practised rhetorician, however marred by vile reporting. "Like all the great and powerful nations that ever existed, we are tending towards effeminacy. What then would become of us without the press? Not to speak of the rational and elegant amusement which it supplies, we owe to it all the spirit that remains in the nation. Were an imprimatur stamped upon it, and a licenser appointed, we should come to the last stage of barbarism. We should be worse than Turks and Infidels, the setting of the sun of science being much more gloomy and dismal than its rising. Let us therefore guard the liberty of the press as watchfully as the dragon did the Hesperian fruit. Next to the power of this house properly exerted, and to the legal authority of juries, it is the best palladium of the constitution. Nay, without it, I fear the other two would prove very ineffectual. Though it be sometimes attended with inconveniences, that is no conclusive argument for its abolition. If it were, what would become of the greatest blessings of society? None of them come pure and unmixed. Religion itself is apt to degenerate into enthusiasm or superstition. Must we therefore exterminate Christianity? God forbid! Why then be so severe on the liberty of the press? If it poison the minds of the people, it likewise administers an antidote. The same wag-

gons, the same flys and stages, that carry down into the country the lies and abuse of faction, carry down also the lies and abuse of the ministry. If any one is bit by the tarantula of opposition, he is cured by the music of the court."

His playful banter was displayed in a manner rather quaint and singular than happy, on occasion of the dispute of the House of Commons with the printers. Proclamation being made, with rewards to any who should apprehend them, a person of the name of Wheeble was taken by one Carpenter, and carried before Wilkes, who not only discharged him, but took recognizances for prosecuting Carpenter. "I understand," said Wedderburn, "the man is Mr. Wheeble's devil. Wheeble was arrested by his own devil, and carried before his own author; the devil was bound over to answer; whether printer beats devil, or devil beats printer, is of no consequence; there may be the devil to do, there will be the devil to pay: if the devil has had the reward that was advertised, the devil has fairly outwitted the noble lord near me; whether he has or has not I do not know, but I hope this house will have nothing to do with him."*

In one instance recorded by Sir Henry Cavendish, the learned member did himself great honour as a patron of literature, Mr. Thomas Townshend, jun., having introduced a personal attack on Dr. Johnson: "So far from the debates of 1738 being kept a profound secret, a great living author, a man in high favour with the gentlemen on the other side of the house, a very famous man, Dr. Johnson, who now receives a pension from government, was employed to publish them. That man, in the middle of this outcry, has, within the last two days, published a pamphlet, reflecting with great severity on the gentlemen on this side, for their conduct with regard to the recent transactions relating to Falkland Islands. And yet we are with serious faces to listen to the heavy complaints of the gentlemen opposite of the licentiousness of the press, while they are themselves encouraging that licentiousness by liberally rewarding the authors. I am not the man to bring that writer to our bar. I consider him *a man of some talent,*

* Sir Henry Cavendish's Debates.

but no temper. [What a liberal admission!] The principles he upholds I shall ever detest. This man, a Jacobite by principle, has been encouraged, fostered, pensioned, because he was a Jacobite." This effusion of party spleen received a just rebuke from Mr. Wedderburn, though the disparaging tone in which he noticed the mighty Aristarch of literature must have chafed his proud spirit. "I do not rise to speak to the question before us, but to a single fact. The misinformation of the honourable gentleman who spoke last, if not corrected, will do injustice to two persons, both absent. It seems that Dr. Johnson has just published some pamphlet. I have not seen it, and never heard the title till now. From the course of my pursuits I have not seen the man four times in my life. This, however, I know, that he was not pensioned because he was a Jacobite, nor on account of his political principles; that he was not pensioned from any such illiberal motive. The only motive for granting that pension was Dr. Johnson's distinction in the literary world, and the prospect of approaching distress. The person who solicited it for him was totally unacquainted with any other circumstance. He knew that he was a man of letters by his great work, the Dictionary of the English Language. The minister to whom the application was made, and the man who made the application, never inquired into his political character. The pension was applied for solely upon the ground I have stated. Let it never be said in this house, nor in any other, that the royal bounty is to be so restrained. If he had been a papist, and at the same time a great mathematician, a great poet, and distinguished for literary merit in various ways, it would have been becoming to extend that bounty to him."

Mr. Wedderburn, thus laudably attentive to the interests of other eminent and meritorious men, was not neglectful of his own. By his earnest and eloquent advocacy of the cause of the haughty Lord Clive, when he complained to the house that the Baron of Plessy had been examined by a committee as if he had been a pickpocket, Mr. Wedderburn secured an affluent, influential, and grateful client. Not content with common fees he presented his counsel with an *honorarium*

worthy of the Indian nabob,—the munificent present of the mansion-house and grounds of Mitcham in Kent; returned him for a close borough, when deprived of his seat, and, even when estranged in politics, would not sever their private connexion. The following letters from Mr. Wedderburn to his superb client show that, however cold and reserved in general society, he could in private, under the spur of self-interest, render himself agreeable and entertaining.

"My dear lord,

"Mr. Stuart informs me that he has sent your lordship a letter he received from the gentleman (Dr. John More), who has the care of the Duke of Hamilton at Geneva, expressing the desire that Voltaire has to be informed of the affairs of the East Indies, and to celebrate the great actions that have been done there; I took the precaution of desiring Mr. Clive to load his trunk with the most important papers that are printed on that subject; but it has occurred to me, that he would deliver them with a better effect if they were introduced by a few lines from your lordship, or at least a written message to the old gentleman. I don't know whether Mr. King is at Walcot; he would be delighted to have an occasion of addressing his favourite author on this subject. Lady Clive will, I am afraid, scruple at a correspondence with so free a writer; but whatever mischief his works may do for a better state, in this world they are very entertaining; and that justice which is every where your due to fame will have a very good effect in England, coming from the pen of a Frenchman writing at the foot of the Alps. I have seen no creature but lawyers for a fortnight past, and I know no news. Robert desires I would make his apology to your lordship for suffering himself to be seduced by me to give me one day at Mitcham, which I am sure you will forgive. Mrs. W. joins me in compliments to Lady Clive and Miss Ducarille, and I am, my dear lord,

"Yours, most sincerely,

"A. W."

"Lincoln's Inn Fields,
9th July 1773."

The next is an agreeable specimen of pleasant chit-chat:—

"There are no public news in town. We had a little mobbing last night (on the release of the Lord Mayor from the Tower), but not to any great excess. My neighbour the Speaker had his windows mauled exceedingly; but, by great good fortune, the gentlemen were so busy with his, that they left mine untouched. Lord

Rochford [then Secretary of State] a few days ago desired if I would ask your lordship if you would allow him to talk over Indian affairs with you. He says, that it is his duty to bestow more attention than has hitherto been employed in an object of the utmost consequence to the nation, and that he wishes to improve, or to form his orders from your conversation. I told him it was uncertain when you would return to town, but I was persuaded your zeal for the public service would incline you to assist government with your advice, whenever that subject was taken into serious consideration. I believe that answer was such as your lordship would have wished me to make; and I must do him the justice to say he held a very proper language upon the subject of India, and seemed to feel the importance of it."

It is to be regretted that Wedderburn, in common with Lord North and Dunning, and most of his eloquent contemporaries, should have been so profusely careless of his riches as an orator. His speech on the motion against Lord Clive, on the Quebec prohibitory and capture bills, and on sending troops to garrison Gibraltar, are ranked among the "spolia opima" of a house superb with trophies, and must yet be reckoned among "the things that were," for want of being transferred to the press. A few fragments, indeed, of his apology for that able but rapacious general, who conquered and rifled India, remain to prove the skill of the advocate rather than the innocence of his client. General Burgoyne having moved resolutions condemnatory of Lord Clive's conduct, in appropriating to his own use vast sums of money which of right belonged to the state, Wedderburn made a most animated appeal to the feelings of the House of Commons in behalf of a great and guilty conqueror, with whom every moment was action, every instant filled with great events:—

"The honourable gentleman (Sir William Meredith) has declaimed much on the stain upon the British name, from the transactions in that revolution in India. I am of a very different opinion. When our feuds and animosities are forgotten—when our little envies and jealousies of large fortunes are, as they ought to be, buried in oblivion—the recording pen of a candid historian will describe these transactions as they were; and he will not fail to hold forth, for the admiration of

posterity, that, in a revolution which acquired to the company a dominion larger, wealthier, and more populous than ever Athens possessed, or than Rome herself, when she had conquered the Italian states,—larger than France, and in revenues superior to most of the powers of Europe; that in the career of such conquests—of such great events—so few actions are to be discovered by the most inquisitive examination (and a more prying one never was known),—so few that reflect dishonour on individuals,—none that tarnish the British name. Now, sir, what are you doing? Because, in such a revolution as history can scarcely parallel, some large fortunes have been suddenly made, you are to determine them to be illegal; and talk of the restitution of money acquired sixteen years ago. For shame! What! Is this to be the national gratitude for actions which have been the admiration of the whole world—the pride of Britain—the envy of Europe? Upon this slender evidence, upon such odious insinuations, upon such contemptible motives, are we to raise an envious hand against those laurels which flourish on the brows of men who have done so much? To whom does the company owe this empire? To the bravery, conduct, and unparalleled activity of men whom you would now plunder in your turn. The honourable gentleman asks where such oppressions and tyranny are to be found as we have practised in Bengal? I will tell him: in the democratical tyranny of an Athenian mob, envious of every great and noble name, taking off one for his wealth, banishing another for his family, and a third for his fame."

Lord Clive was very anxious to have had this eloquent vindication of his conduct printed, and revised by Wedderburn; but his learned friend, either from distrust of his own arguments, or habitual disregard of written oratory, evaded the request. Being asked one day if he had delivered a certain speech which the newspapers imputed to him, "Why, to be sure," he replied, "there are many things in that speech which I did say, many things which I left unsaid, and some things which I wish I had said." Such was his giddy indifference to future fame. Burke alone was careful to preserve the perishable records of his great mind for the

benefit of posterity; but that pre-eminent statesman looked forward to future ages; the lucky lawyer more regarded present effect, and speedy promotion. He had been but a short time in Parliament, when the Middlesex election furnished topics of declamation most opportune for a fluent and accomodating speaker. He seized with avidity on the expulsion of Wilkes as a popular thesis, and not only in his place in the house, but at several meetings in the north of England, fed the fever of excitement into which it threw the country, with all the eagerness of a partizan. Both pseudo patriots played skilful parts in that political drama, for it would be a slight on his discretion to suppose that Wedderburn was what Wilkes himself never was—at heart a Wilkite. The one was re-elected again and again member for Middlesex, became Lord Mayor and Chamberlain of the city of London (a delightful post for a battered liberal and ruined spendthrift); the other rose, as if by sudden impulse, in his profession, and, to use his own happy phrase, "being bit by the tarantula of opposition, was cured by the music of the court."

The vain attempts that were made to retain the eloquent opposition orator in their ranks, as disclosed in the Chatham correspondence, and his own coquettings, are not unamusing, certainly not uninstructive.

In May 1769, the house voted that Luttrell was duly elected member for Middlesex, the numbers being, for Luttrell 296, for Wilkes 1143, on the ground that he was disqualified. Of the debate which preceded this memorable division, a brief abstract was given by Earl Temple to Lord Chatham. "Not a shadow of argument in favour of the disqualification. Wedderburn made a most excellent speech with us. It has cost him his seat in Parliament, which he has this day vacated in consequence of Sir Laurence Dundas's reproaches and desire, from, what I think, too generous a delicacy."

We are informed, in a note*, as soon as it was known that he had resigned his seat for Richmond in Yorkshire,

* Chatham Correspondence.

by accepting the Chiltern hundreds, Lord Clive instantly stepped forward to preserve to his party the benefit of Wedderburn's great talents. The editor gives a letter of thanks from the Right Honourable George Grenville to Lord Clive for this great mark of esteem. By his command, the seemingly disinterested patriot, at the meeting of Parliament in the following January, was accordingly returned for Bishop's Castle. "At a dinner of seventy-two members at the Thatched House on the 10th of May 1769, the day after his vote, including Burke, Lord Clive, Lord John Cavendish, Th. Townshend, Sir George Saville, Lord George Sackville, George Grenville, Alderman Beckford, Colonel Barré, Sawbridge, &c., after pledging the toasts of 'The right of electors,' 'The law of the land,' 'The immortal memory of Lord Chief Justice Holt,' and 'The minority of 154,' the company drank to the health of the steward of the Chiltern hundreds, Mr. Wedderburn, who gave his hearty assent to Mr. Cavendish's creed, 'I do, from my soul, detest and abjure, as unconstitutional and illegal, that damnable doctrine and position, that a resolution of the House of Commons can make, alter, suspend, abrogate, or annihilate the law of the land!'"

The bundle of opposition twigs was soon severed, one by one, and upon George Grenville's death, immediately before the opening of Parliament, in November, the firmest began to waver. The leader of the forces, from his distant camp, Lord Chatham, soon expressed misgivings of Wedderburn's fidelity, which he had vainly endeavoured to secure by a city bribe. When the court of common council had passed resolutions to employ the Recorder (Eyre) in no corporate business, to retain Sergeant Glyn in all city affairs, to give the freedom to Mr. Dunning, for having, when Solicitor-General, defended in Parliament the right to petition and remonstrate, (the Recorder had declined to attend with their remonstrance,) Lord Chatham, after applauding their resolutions, suggested a reward to the "canny Scot." "I could wish Mr. Wedderburn's merit to the cause of the constitution not to be forgot. I think it a species of injustice, if, on some proper occasion, it be not intended to show him that his

spirited disinterested conduct is felt as it deserves. I fear some mixture of narrow ideas and local antipathy. To speak plain, nothing is more contrary to the public good than to retain the smallest grain of alienation or suspicion towards a Scotchman, renouncing and thoroughly resisting Scotch influences and despotism."

In the hope that a personal interview might rivet the shy lawyer's allegiance, Lord Chatham wrote, on the 2d of December, to his trusty agent Calcraft:—

"If you will be so good as to answer Mr. Wedderburn's letter as having communicated it to me, and if you please to express, in my name, the sense I have of his most obliging manner of meeting my earnest wishes to have an opportunity of seeing him, and exchanging sentiments, as far as he will give leave, with a person for whose handsome conduct and great abilities I have a very real and high esteem."

These grandiloquent compliments from the pompous Beau Nash of political ceremonies, the lofty courtesies of Chatham, could not tickle a keen adventurer, who saw better overtures preparing, and the threshold of office vacant. The meeting was postponed at his request, for he had other noble patrons to meet, and those in power. Accordingly, Lord Camden informs Lord Chatham, on the 26th, "the opinion is universal that Wedderburn is in the act of negotiating, or open to it." Parliament met; and Wedderburn, from the neutral benches, opposed an opposition motion for inquiry into criminal informations, alleging the ill humour and heat of the times, which rendered it most unfit.

To the chagrin of Lord Chatham and his broken phalanx, the negotiation was at length completed. Wedderburn was gazetted Solicitor-General on the 26th of January 1771, and had Thurlow for his colleague. "It was a proud day for the bar," says Matthias, in his Pursuits of Literature, "when Lord North made Thurlow and Wedderburn attorney and solicitor general; for never before that day were such irresistible, overbearing talents and powers displayed by the official defenders of ministers:—

"Hos mirabantur Athenæ
Torrentes, pleni et moderantes frœna theatri."

"The minister," said Horne, on his trial, "sat secure between his two brazen pillars, Jachin and Boaz, to guard the treasury bench." Both law officers exercised considerable sway in the house, but in a perfectly distinct style and manner; the one the Ajax, the other the Ulysses, of debate. The one, blunt, coarse, and vigorous, hurled hard words and strong epithets at his opponents in a tremendous voice, with a look and tone of defiance; the other, elegant, subtle, and insinuating, arrayed his arguments in all the persuasive guises of rhetoric, and, where he could not convince the reason, or move the passions, sought to silence objections with ironical pleasantry and bitter sarcasm. Their rival feats of eloquence may be compared to the trial of strength and dexterity between Cœur de Lion and Saladin, mentioned in the Talisman of Sir Walter Scott. King Richard, with his two-handed sword, cut asunder the iron bar which no arm but his could have severed; the Soldan could exhibit no such miracle of muscular strength, inferior as he was in brawn, and sinew, and muscle, but with his blue scymetar he severed the cushion and veil into two equal parts, displaying at the same time the extreme temper and sharpness of the weapon, and the exquisite dexterity of him who used it.

This singular address was soon required to parry the following fierce attack of Colonel Barré: — "I thank the learned gentleman for his intention of moving for a committee to inquire into the causes of these riots. He will be the fittest man to carry such an inquiry into effect, seeing that he knows more of these matters than any of the King's present servants. I hope he will take it up upon a large ground. I hope he will inquire, not only into the causes of the assembling of the present mob, but of those which have been collected together during the last three or four years. As I know that the learned gentleman has frequently declared in this house and in other places—not to a mob, but to very respectable bodies of people—that this wicked administration have been the cause of all the misfortunes that have befallen the country,—that nothing but the removal of this wicked administration and the dissolution of this society

would restore the peace and happiness of this kingdom, I am satisfied that all his powers of eloquence will be directed to those great objects. This inquiry will afford him the finest possible opportunity of discharging the debt which he owes his country. As no man is better able, so no man, I am sure, can be better inclined, to do it; for I have heard him declare, in this house, that one of the King's ministers ought to be impeached. The learned gentleman has kept exceeding good company. I do not say great company, but what I consider very honest company—the corporation of London. If I am not mistaken he did not disdain to become a member of that body, and I believe he received the freedom of the city in a gold box. Since that time the learned gentleman has formed new connexions. Of all men, therefore, no one can be so fit to bring the causes and occasions of these disturbances to public light."

Thus assailed, the new law officer of the Crown made a clever explanation:—"I hope the house will permit me to express my obligations to the honourable gentleman, who has thought fit to make my political conduct the subject of his argument. Of that conduct, Sir, I shall be always ready to give an account. It may be easily summed up, and in a very few words. With regard to the measures which I have supported in this house, and the public part I have taken out of it, I have not repented of any measure I have ever supported. I have not learned to approve of any measure I ever opposed. I shall be extremely happy to have my future conduct tried by any sentiments I may at any time have expressed upon public measures. As to personal connexions, I stand up, with great frankness and great truth, to declare that I had a personal connexion of the first kind; a connexion founded upon friendship, founded upon gratitude, founded upon a conviction of the many virtues, public and private, of the man; it is a misfortune to this country that we are deprived of the services of that excellent man (George Grenville). In point of personal connexions he left me a solitary unconnected individual."

However clear and artful, the defence of the Solicitor-

General appears to have been made with much hesitation of manner, to a cold and suspicious audience, if we may credit the report of Junius:—

"To sacrifice a respected character and to renounce the esteem of society requires more than Mr. Wedderburn's resolution; and though in him it was rather a profession than a desertion of his principles, (I speak tenderly of this gentlemen, for when treachery is in question I think we should make allowances for a Scotchman,) yet we have seen him in the House of Commons overwhelmed with confusion, and almost bereft of his faculties."

The speaker, however, soon recovered them to wield with fatal power in support of administration. His brilliant declamatory art was displayed by the Solicitor-General with an effect most sinister, when attending before the Privy Council to oppose a petition from the legislature of Massachusetts Bay, advocated by Franklin. Some letters, it appears, written by Mr. Hutchinson, lieutenant-governor of the colony of Massachusetts, in the confidence of friendship to Mr. Whateley, private secretary of Mr. Grenville, came into the possession of Dr. Franklin, then residing in London as agent for the colony, in some mysterious manner that was never explained. These letters contained matters likely to fan the flame of revolt that was then kindling in America; one passage in particular, which was certain, if made public, to produce a tumult—"unless we have immediately two or three regiments, it is the opinion of all the friends of government that Boston will be in open rebellion." Copies of these dangerous letters, whose address had been erased, were secretly transmitted by Dr. Franklin to the speaker of the House of Representatives in Massachusetts, with a request that his name might not be mentioned. The speaker, divining the motive of his correspondent, at once caused them to be published. A Mr. Temple was accused of having surreptitiously conveyed them, and fought a duel in consequence with Mr. Whateley (the brother and executor of the governor's friend), who was wounded. To prevent further bloodshed Dr. Franklin publicly avowed that he alone was the person

who had obtained and transmitted to Boston the letters in question. A petition of the Massachusetts legislature for the removal of Governor Hutchinson, in consequence of these letters, was brought before the Privy Council. Their counsel, Dunning and Arthur Lee, having concluded an apologetic address, the Solicitor General replied, and poured on the devoted, certainly not guiltless, head of Dr. Franklin all the vials of ministerial wrath.

This celebrated invective was delivered by the Solicitor-General before the Privy Council, thirty-five of whose members were assembled, in a room scarcely exceeding the dimensions of a drawing-room, and in the presence of a crowd of anxious spectators, Burke, Priestley, and Jeremy Bentham amongst them. Jeremy Bentham adds a curious description of the apartment, of the niche where stood concentrated the object of the attack, and of the assailant. "The President's chair was the back parallel to, and not far distant from, the fire; the chimney piece, projecting a foot or two, formed a recess on each side. Alone in the recess, on the left hand of the President, stood Benjamin Franklin, in such a position as not to be visible from the situation of the President, remaining the whole time, like a rock, in the same posture, his head resting on his left hand, and in that attitude abiding the pelting of the pitiless storm. To return to Wedderburn; I was not more astonished at the brilliancy of his lightning, than astounded by the thunder that accompanied it. As he stood, the cushion lay on the council table before him, his station was between the seats of two of the members on the side of the right hand of the Lord President. I would not, for double the greatest fee the orator could on that occasion have received, have been in the place of that cushion; the ear was stunned at every blow. He had been reading, perhaps in that book, in which the prince of Roman orators and rhetoric professors instructs his pupils, how to make impression. To the instrument recommended, I think by Cicero, the floor being hard and the cushion soft, he substituted the hand. Our late friend Dr. Parr seemed to have studied in the same school."

The following spirited passage forms the conclusion, and is the only specimen left, of this stunning philippic:—

"The letters could not have come to Dr. Franklin by fair means. The writers did not give them to him, nor yet did the deceased correspondent, who, from our intimacy, would otherwise have told me of it. Nothing then will acquit Dr. Franklin of the charge of obtaining them by fraudulent or corrupt means for the most malignant of purposes, unless he stole them from the person who stole them. This argument is irrefragable.

"I hope, my lords, you will mark and brand the man, for the honour of this country, of Europe, and of mankind. Private correspondence has hitherto been held sacred in times of the greatest party rage, not only in politics, but in religion. The betrayer of it has forfeited all the respect of society, and of fellow-men. Into what companies will he hereafter go with an unembarrassed face, or the honest intrepidity of virtue? Men will watch him with a jealous eye, they will hide their papers from him, and lock up their escritoires. He will henceforth esteem it a libel to be called '*a man of letters*,' homo trium literarum. But he not only took away the letters from one brother, but kept himself concealed till he nearly occasioned the murder of the other. It is impossible to read his account, expressive of the coolest and most deliberate malice, without horror.

"Amidst these tragical events, of one person nearly murdered, of another answerable for the issue—of a worthy governor hurt in his dearest interests—the fate of America in suspense—here is a man, who, with the utmost insensibility of remorse, stands up and avows himself the author of all. I can compare it only to Zanga in Dr. Young's Revenge:

'Know then 'twas I—
I forgot the letter; I disposed the picture.—
I hated; I despised; and I destroy.

"I ask, my lords, whether the revengeful temper, attributed by poetic fiction only to the bloody African, is not surpassed by the coolness and apathy of the wily American?"

The praise bestowed by Cicero, in his second philippic against Mark Anthony, "Hæc verberat, hæc lacerat, hæc, hæc cruentat oratio," might be justly applied to this elaborate peroration. It certainly deserves a very different measure of criticism than the contemptuous notice which Lord Brougham has awarded it. "Fox warning the Commons against being led away by such eloquence as Pitt had just

astonished them with, at the renewal of the war in 1803, reminded them how all men tossed up their hats and clapped their hands in boundless delight at Wedderburn's privy council speech. The Solicitor-General's classical wit was displayed in jesting upon Franklin's literary character, and calling him a man of three letters, the old Roman joke for a thief. Pity that so sorry a sample of so celebrated an orator should be all that has reached the present time to justify the account given by Mr. Fox of the effects which its delivery produced. We are thus reminded of Swift's allusion to some statue of Cato, of which nothing remained save the middle region." The great orator did not overrate its effects upon an excited and sympathizing audience. According to the reports of Lord Shelburne, of Burke, of Priestley, and of Dr. Franklin himself, this powerful invective had a result as instantaneous and complete as any that the splendid art of oratory can boast. The lords applauded in a rapture of delight the eloquent and burning vituperation which he poured forth on the head of the unfortunate petitioners' agent, and, in the excitement of the moment, voted their petition to be groundless, vexatious, and scandalous. An unhappy excitement! For there was then kindled, from the firebrand which Wedderburn threw with too skilful an aim, the most disastrous war that ever marred the fortunes, or scattered the hopes of England. He had realized too completely the description of the Roman satirist, "Orator quoque maximus et jaculator." Franklin, who united in his exterior the simplicity of a Quaker with the calmness of a hermit, felt to his inmost soul the flagrant contempt which that harangue stamped upon him, and nourished an anger more concentrated than that of his countrymen, (who burnt the effigy of the abusive orator,) and more lasting. "An illiberal lawyer," he writes, "was hired and permitted to abuse the petitioners and their agent in the grossest terms scurrility could invent." He affected in conversation to regard the philippic as the "idle air one hears, but heeds not;" and said that he despised the speaker heartily, — that so mercenary a man would have said as much in favour of the devil, if he had been well paid for it, as he had said against him.

But the speech rankled in his heart; it is alluded to repeatedly in his correspondence; and seven years afterwards, on the termination of the war, so triumphant to America and so humiliating to Britain, he signed the articles of peace, being then ambassador at Paris, in the identical dress which he had worn when inveighed against by Wedderburn. "He had stood," says Dr. Priestley, "conspicuously erect during the harangue, and kept his countenance as immovable as if his features had been made of wood. But the suit of Manchester velvet which he then wore was again put on at the treaty of Paris. These clothes had never been worn since or afterwards. I once intimated to Dr. Franklin the suspicion which his wearing these clothes on that occasion had excited in my mind, when he smiled, without telling me whether it was well or ill founded." Those articles of peace were the tablets of revenge, on which, like the Loredano of Italian history, he wrote his acknowledgment that the debt of retribution was satisfied; nor does the Venetian senator appear to have been more luxurious in his hate than the philosopher of Philadelphia.*

The war which Wedderburn's eloquence had contributed to provoke, his eloquence continued to maintain. "Bravo, general," might Lord North have justly exclaimed to the learned and military solicitor, as he defended the rise and progress of hostilities, with undaunted vigour, against the assaults of Fox, Burke, Saville, Dunning, Barré;—nay, even defended the campaigns in America against the attacks of the officers, Burgoyne and Howe, who had returned defeated

* In the life of Peter Porcupine, an equally good hater, Cobbett, thus attacks Franklin:—"Every one, I hope, will have the goodness to believe, that my grandfather was no philosopher. Indeed he was not. He never made a lightning rod, nor bottled up a single quart of sunshine in the whole course of his life. He was no almanack-maker, nor quack, nor chimney doctor, nor soap-boiler, nor anabaptist, nor printer's devil; neither was he a deist, and all his children were born in wedlock. The legacies he left were his scythe, his reap-hook, and his flail; he bequeathed no old and irrecoverable debts to an hospital; he never cheated the poor during his life, nor mocked them in his death. He has, it is true, been suffered to sleep quietly beneath the green sward; but if his descendants cannot point to his statue over the door of a library, they have not the mortification of hearing him daily accused of having been a fornicator, a hypocrite, and an infidel."

from its shores. The premier had never entered heartily into the war, and was delighted to shield himself behind this powerful champion, whose intrepidity no defeats, either in the field or senate, could subdue; who could declaim on reconquering America, even after Saratoga, and could "argue still" in defiance of repeated gazettes. "The learned gentleman's speech," exclaimed Burke, "demands blood; the sword must convince the Americans, and clear up their clouded apprehensions! The learned gentleman's abilities surely desert him, if he is obliged to call such a coarse argument as an army to his assistance. Not that I mean any thing reflecting on his parts; I always esteem, and sometimes dread, his talents."

On the promotion of Thurlow to the great seal, in 1779, Wedderburn was appointed Attorney-General, and indulged his keen powers of invective at the expense of Sir Fletcher Norton, when that functionary, jealous of the appointment, chose to resent it from the chair of the house, and to relate, with an unpardonable breach of decorum, some private conversation with Lord North, in order that he might criminate that noble lord. The Attorney-General lashed the indiscretion of the Speaker with great severity, and, turning to the premier, declared, that "as long as their political life went on together, he never would on any occasion remind the noble lord of any promise he might have made him; that he never would accuse him of breach of promise; that he never would be so forgetful of his own character as to make private differences matter of public complaint; and that he would not so degrade himself, or be so lost to the decorum that was due to that house, as to call upon them to interfere in a private negotiation; nor would he so humble his character as to make a difference with a minister the ground of his opinion on a great and important political regulation." Having signally avenged the cause of his friend the prime minister, the Attorney-General rendered to his country a still more essential service. The fanatical riots which disgraced London in 1780, and threatened to lay the capital in ashes, were at their height, when he was summoned to attend a meeting of the Cabinet Council. The ministers had shown culpable supineness; the city magistrates had fled from the danger; Lord Mansfield,

with cowardly prudence, had declined to pronounce an opinion, whether the military could lawfully fire on the populace caught in the act of rioting, without any previous notice; and no member of the cabinet had sufficient moral courage to sign instructions to the officers on duty. The King presided at this extraordinary council, and displayed a far more determined spirit than his official servants. His Majesty made an extempore speech at council: "I lament the conduct of the magistrates; but I can only answer for one, — one (putting his hand on his breast) will do his duty."* He demanded of the Attorney-General to state, in the most precise terms, whether such an assemblage as then infested the metropolis might be dispersed at once by military force. Wedderburn declared that undoubtedly it might, without waiting for technical forms, or reading the Riot Act. "Is that your declaration of the law, as Attorney-General?" said the King. He answered, that it decidedly was. "Then so be it done," rejoined his Majesty. The Attorney-General immediately drew up an order, which the King signed, and on which Lord Amherst dispersed the mob the same evening. The exposition of the law, thus categorically given, has been confirmed by later authorities on the recurrence of a similar calamity†; and the nation may be grateful for the safety of its capital to the firmness of the King who demanded that opinion, and the courage of the man who gave it.

This was the last public act of Wedderburn as a commoner. The chief seat on the bench of Common Pleas became vacant almost immediately afterwards, by the resignation of De Grey; and though Lord North would fain have retained his eloquent ally in the House of Commons at a period darkling with gloom, when his advocacy was more than ever wanting, his claims could not be disputed, and on the 14th of June 1780 he was raised to the peerage by the title of Baron Loughborough of Loughborough in the county of Leicester. The rewards of the peerage had not then usually, nor have since, been conferred upon this office; but similar honours, even the highest

* Lord Bute's letters to Home.

† C. J. Tindal, and also Mr. J. Littledale, on the trial of the mayor of Bristol.

which the sovereign could confer, were granted at that period with a lavish hand. It is related of Lord George Germaine, when called up to the House of Lords in 1782, that he requested an interview of his Majesty, and solicited to be created a viscount, as, should he be only raised to the dignity of baron, his own secretary, his lawyer, and his father's page, would all three take precedence of him. He alluded to Lord Walsingham, Lord Loughborough, and Lord Amherst. The king smiled, and granted his request.*

Lord Loughborough was selected to preside over the special commission which sat in Surrey for the trial of the rioters, and delivered a charge to the grand jury, not less admirable as a specimen of finished oratory, than obnoxious to censure for its artful tendency to inflame the passions of the jurors against men presumed, in the charitable construction of the law, to be innocent, at a moment when the heated feelings of jurymen should have been soothed, and not exasperated. An interval of time is requisite, before the artful advocate can subside into the sober-minded judge; and the following passages from this celebrated charge will prove that the magistrate was sometimes merged in the rhetorician. He commences, indeed, with guarded prudence: "My purpose is to inform, not to prejudice or inflame. For this reason I feel myself obliged to pass over in silence all such circumstances as cannot and as ought not to be treated of, or explained, but in stronger language, and in more indignant terms, than I choose at present to employ." This salutary caution, is however, soon forgotten in the warmth of his address. "On a Sunday—a day set apart by the laws of God and man as a day of rest, and a day not to be violated even by the labours of honest industry—in broad sunshine, buildings and private houses in Moorfields were attacked and entered, and the furniture deliberately brought out and consumed by bonfires. London bore the appearance of a town taken by storm; every quarter was alarmed; neither age nor sex, nor eminence of station, nor sanctity of character, not even a humble, though honest security, were any protection against the malevolent fury and

* Wraxall's Memoirs.

destructive rage *of the lowest and worst of men.* In four days, by the incredible activity of *this band of furies, parading the streets of the metropolis with burning torches,* seventy-two private houses and four public gaols were destroyed. And all this was done in the presence of patient magistrates!" "Religion, (he continues,) the sacred name of religion, and of that purest and most peaceable system of Christianity, the Protestant Church, was made the profane pretext for assaulting the government, trampling on the laws of the country, and violating the first great precept of their duty to God and to their neighbour;—the pretext only; for there is not, I am sure, in Europe, a man so weak, so uncandid, or so unjust to the character of the reformed church, as to believe that any religious motive could, by any perversion of human reason, induce men to attack the magistrates, release felons, destroy the source of public credit, and lay in ashes the capital of the Protestant faith." He concludes with a masterly eulogium on the constitution: "Such is the inestimable blessing of a government founded on law, that it extends its benefits to all alike, to the guilty and the innocent. To the latter, the law is a protection and a safeguard; to the former, it is not a protection, but it may be considered as a house of refuge; indeed, there cannot be a greater proof of the excellence of that constitution, than by administering its benefits to all men indifferently." The passages marked in italics will show that these praises of the law were scarcely justified by the practice of the judge in the present instance. The capital was not laid in ashes, nor did any band of furies parade the streets with lighted torches. The tropes are clever, but the life of man must be regarded more than a metaphor.

"The whole merit," says Lord Brougham,* "of his charge to the grand jury in 1780, in point of execution, consists in the luminous, concise, and occasionally impressive sketch of the riotous proceedings. That this narrative, delivered in a clear and melodious voice, loud without being harsh, recently after the event, and while men's minds were filled with the alarm of their late escape, and with indignation at the cause

* Sketches of distinguished Statesmen.

of their fears, should make deep impression, and pass current as a standard of eloquence far above the true one, may well be imagined. But so much the more reprehensible (and here lies the true ground of blame,) was the conduct of the judge, who could, at such a moment, take the pains manifested throughout this charge to excite, or rather to keep alive and glowing, those feelings which the due administration of justice required him rather sedulously to allay. Within a short month after the riots themselves, six-and-forty persons were put upon their trial for that offence, and nearly the whole of the chief justice's address consisted of a solemn and stately lecture upon the enormity of the offence, and a denial of whatever could be alleged in extenuation of the offender's conduct. It resembled far more the speech of an advocate for the prosecution, than the charge of a judge to the grand jury. Again, when we find a composition which all men had united to praise as a finished specimen of oratory falling to a rather ordinary level, there is some difficulty in avoiding the inference, that an abatement should also be made from the great eulogies bestowed upon its author's other speeches which have not reached us; and we can hardly be without suspicion that much of their success may have been owing to the power of a fine delivery and a clear voice in setting off inferior matter; to which may be added, the never-failing effect of correct composition, if employed either at the bar or in Parliament, where a more slovenly diction is so much more frequent, even with the best speakers."

Shortly before these celebrated trials, Burke wrote to his former friend, the new chief justice, the following excellent letter of warning and advice:—

"My lord, "Charles Street, June 15, 1780.

"Before I say any thing on business permit me to congratulate you on your office and your honours. I hope you will auspicate both by your firmness in the course of real government; and that, instead of bringing the littleness of parliamentary politics into a court of justice, you will bring the squareness, the manliness, and the decision of a judicial place into the house of Parliament into which you are just entering. 'Ut tu fortunam.' If you do this, no difference of sentiment or of connexion shall hinder me from

rejoicing in your elevation. If I know any thing of myself, I have taken my part in political connexions, and political quarrels, for the purpose of advancing justice and the dominion of reason, and, I hope, I shall never prefer the means, or any feelings growing out of the use of those means, to the great substantial end itself." [Mr. Burke suggests a mode of putting a stop to those loose ideas, which are wandering about to find an owner, and incloses declaratory resolutions in favour of toleration.] "Until this step is firmly taken, the house will continue under the impression of fear, the most unwise, the most unjust, and the most cruel of all counsellors."

Lord Loughborough retained his situation as Chief Justice of the Common Pleas nearly thirteen years with unblemished credit, gracing the decisions of a lawyer with the amenities of a gentleman, and tempering firmness with lenity. We read of his mulcting the county of Essex in the sum of 500*l.* for the negligence of the gaoler, in some matter relating to the county gaol. As there was no precedent for imposing such a penalty, the magistrates, to try its legality, obtained a writ of certiorari to remove the record of the fine at Chelmsford, but, after argument in the Exchequer, the writ was quashed, quia improvidè emanavit. He fined a juryman heavily who had fallen into a fit from drunkenness, and spoke of reviving the nearly obsolete law of attaint on a jury persisting in a verdict against evidence.

"His character stood however far less high as a judge than as either a debater in Parliament or an advocate at the bar. His decisions evince little of the learning of his profession, and do not even show a very legal structure of the understanding. They are frequently remarkable for clear, and even felicitous statement, but in close argument, as in profound knowledge, they are evidently deficient. Some of his judgments in the Common Pleas were more distinguished by ability, and more admired at the time, than any which he pronounced in the court where the greater part of his life had been passed."* As a criminal judge, he appears to have been tender of human life, and to have anticipated, in his reprieves, that milder spirit which has

* Lord Brougham's Statesmen.

since beamed on the penal code. His practice in the crown court was indeed more merciful than his professions, to judge from the following report of what fell from him in the House of Lords, on the administration of the criminal laws: "It had happened to him that he had tried prisoners; they had been capitally convicted; he had carefully revised all the circumstances of their trial, and, not being able to discover a single reason to justify a report in their favour, he had reported that he could not think himself warranted in recommending them to mercy. He had done this; and, nevertheless, mercy had been more than once extended to persons of that description, and, he verily believed, on a fair and proper principle. He particularly recollected a case where four prisoners had been capitally convicted, and he had not, on the most careful revision of the trial, discovered to his own mind any difference in their cases, separately considered, which appeared to him to warrant his reporting of one more favourably than of another; and yet it happened that the royal mercy was extended to one of them — and he thought very fairly — it having been considered that it was possible that one out of four might be saved, without injury to the effect of the law. In stating these facts, he did not hesitate in the least to risk his own character for humanity as a judge. He had always held it to be more humane, as well for the example of others, as for the enforcement of the object and intention of the penal statutes, where the guilt was evident and glaring, rather to let the law take its course, than, by a mistaken lenity, to multiply offenders, and accumulate the sacrifices at the shrine of what was falsely considered the sanguinary spirit of our criminal laws." This spirit, however, became insensibly mitigated under the guidance of Lord Loughborough's practical clemency, and the number of executions in London, which had amounted in one year to the appalling number of ninety-six, was considerably diminished. An instance of this lenity, in lighter offences, was mentioned in the House of Commons in 1811, by an orator who wished to show the impolicy of allowing such a latitude of discretion to the judges as they now enjoy in the awarding of sentences: "Not a great many years ago,

on the Norfolk circuit, a larceny was committed by two men in a poultry-yard, but only one of them was apprehended; the other, having escaped into a distant part of the country, had eluded the pursuit. At the next assizes, the apprehended thief was tried and convicted; but Lord Loughborough, before whom he was tried, thinking the offence a very slight one, sentenced him only to a few months' imprisonment. The news of this sentence having reached the accomplice in his retreat, he immediately returned, and surrendered himself to take his trial at the next assizes. The next assizes came, but, unfortunately for the prisoner, it was a different judge who presided; and, still more unfortunately, Mr. Justice Gould, who happened to be the judge, though of a very mild and indulgent disposition, had observed, or thought he had observed, that men who set out with stealing fowls, generally end by committing the most atrocious crimes, and, building a sort of system on this observation, had made it a rule to punish this offence with very great severity; and he accordingly, to the astonishment of this unhappy man, sentenced him to be transported. While one was taking his departure for Botany Bay, the term of the other's imprisonment had expired; and what must have been the notions which that little public, who witnessed and compared these two examples, formed of our system of criminal jurisprudence?"

The judicial character of Lord Loughborough did not remove him from that atmosphere of politics in which he had long loved to breathe. Though safe from the political storms which hurried public men to and fro on the breaking to pieces of Lord North's administration, the Chief Justice attached himself with persevering zeal to the fortunes of his early patron, and advised that ill-omened measure, the coalition cabinet. With less perspicacity than Thurlow—for self-interest, more than any private prejudice, ruled the choice of both—he followed the guidance of Fox in preference to his great rival, and, in the expressive phrase of Walpole to Swift, leaned against a falling wall. But a more decided mistake, into which the Judge led his new allies (and in political matters we know that a blunder is reckoned worse

than a crime), was on the occasion of the King's illness in 1788, when Fox, at his instance, committed the indiscretion of hazarding a theory which every constitutional lawyer must condemn, that the Prince of Wales had as clear a right to the crown, during the incapacity of the monarch, as in the event of a natural demise. "I'll *unwhig* the gentleman for the rest of his life," was the triumphant exclamation of Pitt, when he heard the hasty avowal; nor, though Fox and Loughborough laboured hard to effect a retreat, could they escape without some discredit from this untenable position.

"That the judge was a thoroughly devoted party man all his life can indeed no more be questioned than that he owed to the manœuvres of faction much of his success. He did not cease to feel the force of party attachment when he ascended the bench, and for many years of Pitt's administration was the real if not the avowed leader of the Foxite opposition in the Lords, as well as Chief Justice of the Common Pleas. In the consultations and intrigues to which the crisis of the regency gave rise, Lord Loughborough bore a forward part. Bold, determined, unscrupulous, he recommended in council a course which nothing but the courage derived from desperation could have made any English statesmen in the eighteenth century take into their serious consideration, and which, if it had been pursued, would have left the odium attached to the coalition in the shade, and made the people of this country repent them of not having detested the parties to it yet more bitterly and more universally. It was the opinion of the Lord Chief Justice, that the Prince of Wales should not have waited for even an address of the two houses, but, considering them as nonentities, while the throne was empty, should at once have proceeded to restore, as it was delicately and daintily termed, the executive branch of the constitution; in other words, proclaim himself Regent, and issue his orders to the troops and the magistrates as if his father were naturally dead, and he had succeeded in the course of nature to the vacant throne. That the individual to whom this advice was tendered could not have done so without a civil war appears sufficiently evident." *

* Lord Brougham.

The plottings and intrigues, which harassed the contending parties at this era of anxious suspense, tend to throw a dark shade of distrust over the political honesty of public men. There fell both on Thurlow and Wedderburn more than a gliding shadow of suspicion. Both were eager, the one to grasp and the other to retain the great seal, and, with a vigilance quickened by his own personal views, Lord Loughborough kept watch on the mysterious movements of the Chancellor, and sowed alarm in the minds of his party. "The Chancellor's object," he writes to Fox, "is to make his way by himself, and he has managed hitherto, as one very well practised in the game. I cannot help thinking that the difficulties of managing the patient have been excited, or improved, to lead to the proposal of his inspection (without the prince being conscious of it); for by that situation he gains a frequent and easy access to him, and an opportunity of possessing the confidence of the queen. I believe this the more from the account of the tenderness he showed at his first interview, for I am sure it is not in his character to feel any. I think he will try to find the key of the back stairs, and, with that in his pocket, take any situation that preserves his access, and enables him to hold a line between different parties." Moore conjectures, that Lord Thurlow was perhaps induced to break off so suddenly his negotiation with the prince's party, from perceiving in the influence of Lord Loughborough over Mr. Fox a risk of being supplanted in his views.* The close scrutiny which his rival kept over him is amusingly exemplified in Bishop Watson's Memoirs. The scheming prelate had quoted Grotius to show the prince's right on the question of the regency, and thus relates the sequel: "The Chancellor, in his reply, boldly asserted that he perfectly well remembered the passage I had quoted from Grotius, and that it solely respected natural, but was inapplicable to civil rights. Lord Loughborough, the first time I saw him after the debate, assured me that before he went to sleep that night he had looked into Grotius, and was astonished to find that the Chancellor, in contradicting me, had presumed on the ignorance of the house, and that my

* Life of Sheridan.

quotation was perfectly correct. What miserable shifts," exclaims the mortified and moralizing bishop, "do great men submit to in supporting their parties!" But the keeper of the king's conscience had recourse to more miserable shifts than the mere trickery of debate. His clandestine correspondence with the opposition was detected, and should have been exposed, but the contemptuous security of Pitt suffered him to continue in the possession of office for two years, and then subjected him to the indignity of an abrupt dismissal—a just retribution for his sordid treachery and unblushing chicane. The seals were put into commission, and Chief Baron Eyre, Mr. Justice Ashurst, and Mr. Justice Wilson nominated commissioners. With such ability and dispatch did these eminent men discharge their trust, that, when called upon to resign office after an interval of eighteen months, they were enabled to inform his Majesty that, had the summons been two hours later, not a single case would have remained undisposed of.

On the memorable secession of the whigs in 1792, when the Duke of Portland, Earl Fitzwilliam, and Windham quitted the camp of modern whiggism in alarm at the revolutionary language of their chief, Lord Loughborough hastened to the van of the seceders, and dexterously manœuvred to effect a coalition. The curtain that concealed these intrigues has been lately raised by Lord Malmesbury, and condensed from his Diary we present the following graphic account of the negociation:—

"Burke, at Burlington House, declaimed against Fox as disqualified for office by the taint of French principles and politics, and went on for an hour, during which we were quite silent. Loughborough, on his going away, agreed he had said what was true, but that it should not be said that the times called for a junction. Loughborough advised that the leaders of opposition should attend the privy council, to which they were invited, for considering the proclamation; that it would be approaching and conciliatory." Failing in this proposal, Lord Loughborough negotiated with Dundas a coalition, and instanced the strong manner in which Pitt had advocated the abolition of the slave trade, as a clear set-off

against the length to which Fox had gone relative to the French revolution. The treaty advanced slowly, for though Dundas tempted the would-be-chancellor with an offer of the seals, he was loath to break with his party. On the 20th of December, at his particular request, Sir Gilbert Elliott went to the Duke of Portland to know what was his opinion as to Lord Loughborough's taking office. The Duke was decidedly against it, and said he would never consent to it. Foiled for a time, but not disheartened, the wily chief justice, on the meeting of parliament, volunteered to ministers a warm support, answering admirably his former allies, Lords Lansdowne and Lauderdale, who had opposed the alien bill in very violent and mischievous speeches. "The Duke of Portland, to the great concern and grief of his friends, did not say a word.* I urged him repeatedly to get up, but he said he really could not,—he felt it to be impossible; that Lord Loughborough had said all that could be said, and that it was impossible to speak after so fine a speech." The same night Lord Loughborough wrote to Lord Malmesbury, to express his keen vexation: "My dear Lord,—Though I am sensible that I spoke with some effect to-night, I am not young enough to feel on that account any satisfaction that can make up for the Duke of Portland's silence. The few words in which he expressed to me his approbation, pronounced upon his legs would have had more effect on the house and on the public than ten speeches. The Duke of Portland hesitates whether he shall withdraw his countenance from a party formed of Lord Lansdowne, Fox, and Grey, under the auspices of Chauvelin. What a position this is for his character, and those numerous friends, who, not only from personal attachment, but as a great public point for the country, wish to hold high the honour of his name. I could not help writing this to you, tired as I am, but yet more vexed than tired."

This reliance on the Duke of Portland was indeed leaning on a broken reed, and deserved Sir Gilbert Elliott's humourous rebuke:—"The existence of our party depends on *his* firmness, decision, vigour, activity, consistency, uniformity

* Lord Malmesbury's Diary.

of conduct, and honourable support of his friends, as head of a great party; and unfortunately the party is like Snip, and would look much better without its head. It is like the sign of the good woman!"

"Lord Loughborough's acceptance of the seals," Sir Gilbert continues, "I believe sincerely to be eminently necessary for the public service. His conduct has been highly honourable, and every thing like personal claim, or even party claim, on him by the Duke of Portland is certainly at least cancelled, if not converted into a direct provocation, by what has passed since the commencement of this session. But the public good, in my opinion, requires his services, and for that reason they are due from him. I shall certainly not only approve, but applaud his acceptance of the seals."

On the second of January Lord Loughborough read a long letter, or rather manifesto, in which he recapitulated all that had passed since June; that Dundas pressed him to accept; that he himself wished to wait, as it was of such importance to be joined by so respectable a character as the Duke of Portland. He had seen Dundas, and stated to him fairly that the consequence of his taking the great seal would be, that forty or fifty members only would join government; that as many more now with government would probably return to opposition; that it was for ministers to consider whether it was for their interest to take him on these conditions. "Lord Loughborough," adds the diplomatist, "does not appear to have communicated all that was said, for, at the close of the interview, Dundas still continued of opinion that it was for the interest of government to take him."

At length, having affected a coy, reluctant, amorous delay, with such desperate fortitude as twice to reject the overtures of Dundas, Lord Loughborough thought he had done enough to prove his constancy, and acquiesced in becoming, what for thirty years he had sought to become, Lord High Chancellor of England.

CHAPTER VI.

THE LIFE OF LORD LOUGHBOROUGH—*concluded.*

On the 23d of January, 1793, Lord Loughborough was rewarded with the long-sought object of his toils, hopes, and intrigues, the possession of the Great Seal.* The strong evidence of competent witnesses attests that he had some admirable qualifications for this high office. "His judicial oratory," says Charles Butler, "was exquisite. The greatest detractors from his merit acknowledged the perspicuity, the luminous order, and chaste elegance of his arguments. Like Lord Camden, he frequently and successfully introduced law phrases into them. His greatest failings were, that he too clearly showed his want of attention to much of what he heard from the bar, and his want of real taste for legal learning. With this taste Lords Mansfield, Camden, and Thurlow were deeply imbrued." But though he might display less attention than was due to the arguments of the bar, his graceful demeanour and intuitive quickness of perception rendered him a most agreeable judge to practitioners. Mr. Hargrave, in his Jurisconsult Exercitations, also speaks of the captivations in the manner of his judgments, and of his most splendid judicial eloquence. The volumes of Vesey, which faithfully report these judgments, are in much esteem with lawyers, but of course involve questions too abstruse and technical to interest any other than professional readers. There are, however, two causes of such general concern, and which display the character and acquirements of the

* Among the many satires with which the press teemed on this event, the following, by Matthias, was the most playful yet stinging. "The Serenata of Acis and Galatea has been performed in Downing Street to a private company. The part of Acis by Mr. Pitt, Polyphemo by Lord Thurlow, and Galatea by Lord Loughborough. The baritone of Lord Thurlow was quite Polyphemeish, and fully sustained, but it was impossible to do justice sufficiently to Lord Loughborough's *diminuendo, when he died away in the arms of Acis.*"

Chancellor in such an engaging light, that a short analysis and extract will repay perusal.

A bill was filed, (Myddleton v. Lord Kenyon and others, 2 Vesey, 413,) to set aside an improvident agreement, by which the father, who was tenant in fee, had surrendered large estates to trustees for the use of the son. Mr. Hargrave, counsel for the plaintiff, enforces the peculiar hardships of the case in a singular style of oratory. "It is the cause of an aged, worthy, and respectable father, of ancient family, against a respectable and only son;—of a father, in disposition kind and generous, but who, in the expenditure and management of a vast family fortune, has been heretofore somewhat indolent, inattentive, careless, incautious, and improvident, against a son, in understanding, I am told, cultivated and enlightened, and, if he is to be judged of by this cause, sufficiently vigilant and cautious about the preservation of his rights and interests in the family estates. In an ardent contention between relatives so described, who can discharge the functions of an advocate without being disturbed by his feelings as a man? Nor are the objects of contention less striking than the description of the parties. Mr. Myddleton the father, as plaintiff, impatiently struggles to regain independence; to regain the use and disposal of an immense property; and to unshackle himself from stipulations which he, at least, feels as impoverishing, degrading, and oppressive; and to accomplish this deliverance he addresses himself to the protecting justice of a court of equity. On the other hand, Mr. Myddleton the son, as a defendant, claims the fullest benefit of those very same stipulations; defends them as just, proper, and necessary; peremptorily insists on the most rigid and unqualified observance of them; and strongly refuses to yield an iota of the provisions in his favour either to the demands or to the occasions of his father. But in such a case who can argue without painful emotions?

"I admit," continues Mr. Hargrave "that there is entwisted into the transaction, which the plaintiff seeks to invalidate, an aggregate of the most unimpeachable integrity. The first of the trustees, Lord Kenyon, is of so peculiar a description, that to suppose him to be privy to a fraud would be to

suppose justice itself transmuted; would be to suppose what we must all presume, and I heartily believe to be, a moral impossibility." The advocate being conscious that to cry out fraud in such a case seemed like saying that a wrong thing had been done without a wrong man to do it, has resort to an idea that the son has been won into that species of deception, which aims to serve the person it imposes upon, and so considered his taking advantage of his father's error, and all the incidental deceptions, as a sort of pious fraud. "Mr. Hargrave suggests that the court may for a moment (for the father's great age will scarce admit of more) suspend decision by recommending an amicable adjustment between the father and the son, and recommending a new settlement. But should the son force the court to make a decree, he submits for the father, that there will be sufficient scope to decide the case according to natural feelings, to decide it for the incautious father against the too cautious son."

The Chancellor refused the application, and gave his reasons in a strain of blended dignity and feeling. "There was no misapprehension. No person would have dared to impose so grossly on the plaintiff as to tell him he could not sell an estate of 7,000*l.* a year, of which he was tenant in fee: Would any man have presumed to tell him he could not pay those debts by selling part of that estate? No man would have been idiot enough to represent that it was necessary for paying his debts that his son should join. But it is true it was necessary for the purposes he meant; purposes of the heart, not of the understanding; purposes it would be the pride of a man to say, at that time of life, he had completed: that he had put his affairs in such a way that his son would be owner of a great estate, with his debts paid, and a magnificent castle, and in a high situation in the world. For the purposes of that arrangement, it was truly represented to him—he felt and knew that it was not sufficient that his will alone should operate; but the concurrence of his son was necessary. With what anxiety he observes the motions of his son! How he watches him when engaged with Aylmer (his attorney)! What happiness he feels when the son comes, with duty and propriety, throws himself into his father's arms, and desires to

be guided by his attorney and counsel, whom the father, having so many money transactions, must have known, whom the son could not have known. Trustees were named on the part of the father. Every thing is reversed in this case. The bill is perfectly novel. I recollect cases where young men have complained of restraint, that the son being full of affection and duty, the father, taking advantage of that disposition, or perhaps some accommodation of money, had imposed upon the son by making him resettle the estate. Such cases may have occurred: they are the reverse of this case. The extravagance is on the other side, the frugality on that of the young man. The father complains that he has been deluded to make a settlement for the payment of the debts and the preservation of the family; and upon being permitted to employ his own people, among whom are names that one would not suspect to be affected by such a word as fraud. Suppose the plaintiff's situation was misrepresented to him as stated; he must have had but one degree of intellect beyond that situation that would have made him an object of the protection of this court, if he had been so grossly deceived. I am of opinion, therefore, that the relief prayed is completely incompetent. It has been emphatically pressed by Mr. Hargrave, that this matter might be much better arranged than by a court of justice. It was pressed as a subject on which the court might interpose by way of recommendation. I cannot recommend where I can make no decree. Sitting here as a judge in a court of equity, I am bound to decide upon the case brought before me; but in any other place, and abstracted from the character in which I now sit, there is no doubt it must be the wish of every honourable mind to comply with the proposal."

Another case in the decision of which Lord Loughborough proved himself no less the scholar than the gentleman, was a petition from Mr. Francis Wrangham, the late venerable Archdeacon of Chester, a name of high note in the republic of letters, to be admitted a fellow of Trinity Hall. The only ground for the Chancellor's interference rested on the meaning of the founder in the words "idoneus moribus et ingenio," the charter of foundation containing a provision, "quòd in loco

socii collegii subrogetur scholaris idoneus moribus et ingenio." The Solicitor General (Mitford) and Smith, counsel for the petitioner, contended that the latter word, according to some Latin writers, signified disposition, but that it also signified talents, and that there was no instance in which it was used in both senses. It must, they argued, mean here learning and talents. "It is suggested that the word 'mores' has a broader signification. Whenever that word is used by classical writers, as descriptive of an individual character, it is particularly confined to morals; when it is appropriated to the description of a nation, then it becomes a more general term, and includes the whole manners of the people. In the dialogue between Pamphilus and Davus, in the Andria of Terence, there is an instance of the use of this word in the former sense, 'uxorem his moribus dabit nemo.' So in Quintilian de Philosophia: '*mores* ante omnia oratori studiis sunt excolendi, atque omnis honesti justique disciplina pertractanda:' he could not mean *manners*, for he had treated of them before. Horace has

'Quid leges sine moribus
Vanæ proficiunt?'
'Utcunque defecere mores,
Dedecorant bene natos culpæ.'

Where Juvenal writes 'et linguam et mores,' he means the manners of a city."

The Attorney-General, Scott, argued against the claim, and cited that line of Ovid in his Elegies, where, speaking of his mistresses, he could not possibly mean morals:—

"Hæc specie melior, moribus illa fuit."

The Chancellor was compelled to dismiss the petition, but did it in a manner the most soothing to the feelings of the petitioner. "It is not a mere philological question, whether the fitness is in respect of the moral character, or the term the founder has used is sufficiently large to include all the circle of useful and agreeable qualities that make an accomplished character in society, and go beyond the mere moral man. Mr. Smith has, with great critical acuteness, and a classical collection of well-arranged instances, contended that in the best Latin writers the word 'mores,' when applied to an indi-

vidual, or a nation, may be used indifferently in the more restrained or larger sense; and that it would not be incorrect, as to an individual, to understand it in the larger sense. There is one instance in which I think it signifies both. It is the beginning of Horace's address to Augustus:—

> 'Cum tot sustineas et tanta negotia solus,
> Res Italas armis tuteris, moribus ornes.'

He does not exclude the virtues, and certainly he meant to include all the ornaments of the character. There is one instance which I wish to quote, because the passage, in which the word occurs twice, has a great analogy to the present case, and enters much into the principles which relate to this subject. 'Sed omnium societatum nulla præstantior est, nulla firmior, quàm cum viri boni, moribus similes, sunt familiaritatè conjuncti.' 'Nihil est amabilius, nec copulatius, quàm morum similitudo bonorum.'—Cicero de Officiis, lib. i. In my conception, in considering the manner in which these statutes are framed, the mode of election, the society the founder has established, he meant to give them a full judgment, a taste, a feeling of the qualities of the person they were to subrogate in case of a vacancy, knowing that in such a society, consisting of a small number of persons, to be united under the roof of the same college for purposes of learning and education, jarring tempers, discordant dispositions, 'dissimilitudo morum,' would mar the purpose of the foundation, so different from the larger corporations instituted for more public purposes, and more mixed with the business of the world. I cannot think the founder would have taken the great pains to have thrown on the future members of his foundation the duty of electing the person, giving them the power, and where there is nothing of matter of choice but the judgment, de moribus et ingenio, meaning to tie them down to the strict and precise rule, by the observance of which a man merely acquires a character of common honesty—by the neglect of which he becomes a character not fit to be elected into any society. He meant to leave it as ample and large as possible, that they might be fit in all respects for each other; and the reference I conceive is more with regard to the society of which he is to become a member, than the

quality of the person himself. It would be an unfortunate thing, if a college, consisting of so small a body, was put into the predicament that there should be means of introducing a gentleman whom, *however worthy and fit for greater and better situations,* the whole college have thought not fit to be elected into their society; therefore I must dismiss the petition." Mr. Wrangham must have left the court, displeased probably at the decision, but in charity with the man who gave it, and have deemed him gifted "moribus et ingenio" in the largest and fullest sense of the words.

In discussing the qualifications of an eminent modern judge, we should have avoided the cheap praise of commemorating his integrity—the purity of the bench has in our days been free from the spot or speck of suspicion—but for an anecdote furnished by Sir John Sinclair, too honourable to the individual, and to the character of our courts of justice, to be omitted. The worthy baronet had entertained some old grudge towards Lord Loughborough, and therefore volunteers a testimony the more deserving of credit. His superb book of correspondence, in which all the letters are regularly classed, beginning with emperors, kings, princes, and descending at length to common men, archbishops and chancellors, contains the following characteristic notice.

"It was at his (Lord Loughborough's) suggestion that Lord Somerville was set up in opposition to my re-election as President of the Board of Agriculture, of which I was the founder, and it was by his intervention that the General Inclosure Bill, after being carried through the House of Commons, was thrown out in the Lords. In justice, however, to a political opponent, now no more, I think it right to state, that in the most trying circumstances he maintained the integrity of his judicial character. It is well known how closely he was connected with the late Duke of Portland. The Marquis of Titchfield, the duke's son, married Miss Scott, the eldest daughter and joint heiress of General Scott. Besides the immense property left by her father, she had likewise a claim by the death of her relation, Sir Robert Gordon, to a valuable estate in the county of Moray. The other claimant was Mr. Cumming of Altyre, and in the

litigation before the Court of Session a decision was given in his favour. It was appealed to the Lords, when Lord Loughborough sat on the woolsack. Knowing that in the particular circumstances of the case the eyes of the public would be upon him, he earnestly requested Lord Thurlow's assistance in deciding the question. It is singular that Lord Thurlow's opinion was favourable to Lord and Lady Titchfield; whereas Lord Loughborough thought the decision should be in favour of Cumming. Had he chosen to acquiesce in the opinion given by Lord Thurlow in favour of the Titchfield family, a large fortune would have devolved on the son of his friend; but, greatly to his credit, he decided in favour of Mr. Cumming. For this single act, so highly favourable to the purity of English jurisprudence, I forgive Lord Rosslyn the injuries he did me."

The above instance might be cited to prove what would otherwise be deemed a paradox, that it is sometimes injurious to the suitor to have the judge for his friend!

The quarrel between the ceremonious Chancellor and the worthy Scottish baronet originated in his abruptly urging Lord Loughborough to lose no time in putting the official seal to the charter of the Board of Trade, and stating that he had summoned several members for a meeting on the following day, on the assurance that there would be no difficulty or delay. As this importunate missive only reached the keeper of the King's conscience at nine o'clock at night, it is no wonder that he should chafe at such an apparent slight, and visit his wrath on the head of the blunt offender in the following stately epistle.

"Tunbridge Wells,

"Sir, 23d August, 10 P.M., 1793.

"I received on the 21st your letter, informing me that the difficulties attending the establishment of a Board of Agriculture were so nearly surmounted that it rests entirely with the great seal, the forms of which you trusted would be gone through so quickly, that you had ventured to request the attendance of the members of the board on Thursday the 22d; and this evening, about nine o'clock, I have received the instrument itself, with your letter, desiring the great seal to be affixed to it, as several gentlemen had come to town to attend the meeting to-morrow.

"During my long stay in town, which I left last Saturday, no draft of this instrument was ever communicated to me, and the first inspection I have had of it in its present form is about an hour ago. It must, indeed, be supposed, that to affix the great seal is a mere form, if it is to be gone through so quickly; but knowing that it is a very sacred duty to attend with the most exact care to every instrument of an unusual nature, and, even upon the hasty perusal of this instrument, entertaining considerable doubt as to the legality of some of its parts, I should stand highly responsible, if I were to pass it on so slight a consideration as has been *prescribed* to me.

"With the disposition I have to think favourably of the institution, I should be very ready to abridge all ceremony; and, in my wish to accommodate the gentlemen who have been requested to attend to-morrow, I should have overlooked the mere irregularity of the proceeding in not communicating the warrant to me; but the frame of the instrument itself is such, that I hold it necessary to be informed of the grounds, upon which the attorney and solicitor generals have proceeded, before these letters patent pass the great seal.

"I have the honour to be, sir,

"Your most obedient humble servant,

"LOUGHBOROUGH."

"The surprise of my father," says the Rev. J. Sinclair, "at this angry demur was the greater, since he had received not long before from the same high quarter an actual acknowledgment of having been put in possession of the draft in question, and of having examined it with almost unqualified approbation."

But it is time that we should pursue the remaining brief course of Lord Loughborough's personal and political history.

From weakness of voice, and a failure in his physical organs, he made less impression in the House of Lords than might have been expected from the brilliancy of his past career. He took a rare part in their debates, and we discover only the faint semblance of previous vigour in the retort which he made on Lord Lauderdale, who had been praising the notorious Brissot, and avowing a pride in ranking him among his friends. Lord Loughborough remarked, that "since friendships were founded on taste and sentiment, he did not doubt that Lord Lauderdale's friendships were always

founded on correct principles. As there was a taste in pictures for objects in ruins, for desolated cities, shattered palaces, and prostrated temples, so might there be a similar taste in moral and political questions. To some minds a people in a state of insurrection might be a sublime object."* With the same lofty bearing the Speaker of the House of Lords designated a speech of Lord Stanhope's as an awful visitation of God, and described a motion made by Lord Guildford as "the thing which he held in his hand, too contemptible to put." The Chancellor seems to have had no weight with Pitt, and to have been little trusted in the cabinet. We learn from the lately published memoirs of Lord Malmesbury, that all the cabinet, (1797,) excepting Pitt and Lord Grenville, were kept in ignorance of that ambassador's most important dispatches,—that he was obliged to write one for the whole cabinet, and another for Lord Grenville. Malmesbury says, in his Diary, 1797, "the Chancellor, Lord Loughborough, walked home with me from Pitt's; he not in the whole secret, and, as usual, questioning and apparently sanguine." Distrusted by the leaders of the cabinet, the Chancellor loved to cabal with his old friends in opposition, and would indite letters of double aspect, and dark with mysterious meaning. The following epistle to Grattan, written in the same year, is a specimen.

"We know and highly prize the value of your support, which showed itself so conspicuously in the last session. We also feel the high duty that the public danger imposes on all men to act on large principles, disregarding the play of private interest or of prejudice. But you must allow a fair scope both for deliberation and action, otherwise we should not deserve your esteem, nor with it that friendship which I hope and trust will ever remain most entire between you and Loughborough."

The Chancellor continued in his office, discontented with Pitt's hauteur and coldness, baffled and restless, till the autumn of 1800, when, on the agitation of the Roman Catholic claims, his intriguing spirit renewed its former fires, and he entered with Lord Auckland into cabals to remove Mr. Pitt from the head of the government. It may be con-

* Parliamentary History, vol. 40.

jectured that a lurking jealousy of the stern premier, into whose society he was scarcely permitted to enter, and to be emancipated from whose despotic control, became at length a passion with Lord Grenville; a selfish desire to be further advanced in the peerage, by humouring the King's prejudices, and an inveterate love of plotting, induced the political gambler to take a revived pleasure in the device to supplant his colleagues. Their manœuvres are tracked and noted down by the same veteran diplomatist, who had recorded the stratagems which led to his promotion some eight years before.*

"Lord Loughborough opposed the removing the test. Pitt never mentions the idea at St. James's, and gives time for Lord Loughborough directly, and for Lord Auckland indirectly, through the Archbishop of Canterbury and Bishop of London, to raise an alarm in the King's mind, and to indispose and exasperate him against the framers of this measure; — this very blameable in Pitt." On February 10th, Lord Malmesbury makes the memorandum in his slipshod English: "Lords Loughborough and Auckland appear to have *over cunning'd* the business, and not to have resolution or firmness of character to act openly on what they have combined (I apprehend) secretly. The consequence is that the Chancellor will resign (against his will), and the other remain just where he is (against his expectation); and both under the dread, particularly Lord Auckland, of Pitt's return to power, and that they shall incur, as they will deserve, his displeasure. When, on the 22d of February, the King became suddenly delirious, Lord Malmesbury declaims in almost frenzied indignation against those who, secretly and unknown to the ministry, practised on the King's religion. On 26th February, after remaining many hours without speech, he said, "I am better now, but I will remain true to the church." His honest manly mind had been some months the prey of machinations woven in the school of Machiavel. "Lord Auckland, in consequence of a secret intelligence with Lord Loughborough, wrote to the Archbishop in September. The Archbishop informed the King, at Weymouth, who sent a missive to Pitt, expressing his knowledge and disapprobation.

* Lord Malmesbury's Diary.

The Chancellor has been acting very various parts lately." After tracing these dark intrigues, we feel a malicious delight in the retribution that befel both plotters, and rejoice to see "th' engineer hoist with his own petard." With lingering steps and slow, the Chancellor found himself, to his own surprise and chagrin, compelled to follow the retiring premier, and to resign the seals; but so evident was his reluctance, and so keen his regret, that he continued to hold them for many days after the King's recovery, and after taking leave of the bar. With the profession he had been a favourite, though his decisions commanded little respect in his latter days, for his manners were courteous, and even noble, and his liberality great. "Wholly above any sordid feelings of avarice or parsimony, and only valuing his high station for the powers which it conferred, and the dignity with which it was compassed round about, he maintained its state with a munificent expenditure, and amassed no money for his heirs. He was, moreover, endowed with personal qualities, which a generous profession is apt to esteem highly. Reasonably accomplished as a scholar, cultivating all his life the society of literary men, determined and unhesitating in his conduct, polite in his demeanour, elegant, dignified in his habits, equal in his favour to all practitioners, unawed by their talents, as uninfluenced by any partialities, and resolute in maintaining his own and profession's independence of any ministerial authority, — those who have succeeded him never advanced greater claims to the personal confidence or respect of the bar; and his known deficiencies were overlooked by men, who felt somewhat vain of being ruled, or being represented by such a chief."*

His compulsory resignation was soothed in some degree by accumulated honours and rewards. A bill had been lately passed, by which he became entitled, as retiring Chancellor, (the first who was so favoured), to a pension of 4,000*l.* a year; and on the 21st of April he was created, by patent, Earl of Rosslyn of Mid Lothian, with remainder, in default of heirs male, to the heirs male of his sister Janet, Lady Erskine of Alva. He had been twice married: on the 31st of Decem-

* Historical Sketches.

ber, 1767, to Betty Anne, only daughter and heiress of John Dawson, Esq., a Yorkshire gentleman of large fortune, who died in February 1781; and again a second time, on the 12th of September 1782, to the honourable Charlotte Courtenay, daughter of William, first Viscount Courtenay of Powderham Castle; but had no child to succeed to his titles.

Upon his fall from power Lord Brougham descants with a bitterness due to the false friend and faithless politician. "The fancy respecting the coronation oath, which so entirely obtained possession of George the Third's mind, and actuated his conduct during the whole discussion of Irish affairs, is now generally believed to have been impressed upon it by Lord Loughborough, and probably was devised by his subtle mind, as it was used by his intriguing spirit, for the purpose of influencing the King; but, if this was the object of this notable device, never did intriguer more signally fail in his scheme. The cabinet to which he belonged was broken up; a still more crafty successor obtained both the place he had just quitted in the King's service, and the place he had hoped in the King's favour. He was made an earl; he was laid on the shelf; and, as his last move, he retired to a villa remarkable for its want of all beauty and all comforts, but recommended by its near neighbourhood to Windsor Castle, where the former Chancellor was seen dancing a ridiculous attendance upon royalty, unnoticed by the object of his suit, and marked only by the jeering and motley crowd that frequented the terrace. For three years he lived in this state of public neglect, without the virtue to employ his remaining faculties in his country's service by parliamentary attendance, or the manliness to use them for his own protection and aggrandisement."

The ex-Chancellor, it would appear from the Duke of Portland's correspondence, was a prey to disappointment and chagrin. The Duke of Portland, writing to Lord Eldon, in October 1801, expressed his concern "as to the indifference, or, to speak more properly, the indisposition at least of Lord Rosslyn to approve the terms of peace and to attend the meeting of Parliament, with regard to both which I know he has said, that 'he knew nothing but what he had read

in the newspapers or gazette, and that he had had but too much time to reflect in solitude upon the unpleasant events of the present period.'" The duke suggests, that "the most perfect means should be taken to put an end to the sort of language which is held by Lord Rosslyn, to remove from him all cause of complaint, upon the ground of want of attention or shyness on the part of those who compose the administration. With permission, I cannot help thinking that the station you hold gives you a peculiar title to commiserate and consult with him; and excuse me for adding, that I am very anxious that the suggestion I have ventured to throw out respecting Lord Rosslyn may be approved and adopted by you." Lord Eldon acted on this hint, and succeeded so well in dulcifying his predecessor, as to be rewarded with his proxy.

A better reason has been found for the ex-Chancellor's choice of Baylis, than that which Lord Brougham assigns with so much causticity. He had been a favourite with the King since the suppression of the riots in 1780, and his social qualities rendered him always a welcome guest in the royal circle. Lord Rosslyn's residence at Baylis gave him frequent opportunities of intercourse with George the Third. It was about two miles from Windsor. It was generally understood by his family, that the King had expressed a wish that his lordship would fix his country residence near there. After his retirement he continued to receive marks of his Majesty's private friendship and regard. He was a very frequent visitor at the castle, and, on the very morning of the day on which he died, he was with the King at Windsor, from whom, after his audience, he went to the Duke of Portland's at Bulstrode, and, returning home, he was suddenly attacked by that severe illness which carried him off. He was struck speechless with apoplexy, and died in a few hours afterwards, on the 3d of January 1805, in his seventy-third year. He was buried in Saint Paul's cathedral by the side of Sir Joshua Reynolds. Our readers will excuse the lapidary inscription, as a more just idea of his character and worth may be collected, we trust, from these pages than from a mural tablet.

The personal appearance of Earl Rosslyn was not remarkable, being low in stature, and spare in person. His thin, small, and sharp features would have had an insignificant character, as they peeped forth out of the long and flowing wig, had not their effect been enhanced by an expression of remarkable shrewdness, and by a clear grey eye of keen intelligence. It is related of him, that, like other plain men of talent, Dunning and Wilkes for instance, whose room was all mirror, he had the weakness of personal vanity, and lost much time before the looking-glass. Lord Mansfield, on the other hand, who had a remarkably noble appearance, declared, when sitting to Sir Joshua Reynolds for his portrait, that he could not say whether it was a likeness or not, as his valet dressed him in the morning and put on his wig, and he had not seen his face for thirty years. There might be affectation in this remark; but it is easy to account, on other grounds than those of mere vanity, for the uneasiness with which men who calculate on wielding popular assemblies should dread the absence of personal advantages, and seek to remove the disagreeable impression of the last look by taking another. These plain men prove, however, were there any need of proof, that Cicero's enumeration of good looks is not indispensable in the requisites for an orator. We are told by Boswell, on his mentioning to Johnson the fact of two friends of his, one Cator, a timber merchant, and Wedderburn, being particularly fond of looking at themselves in a glass, that the doctor was not surprised at the circumstance, but refined upon it as follows: — "They see, reflected in that glass, men who have risen from almost the lowest situations in life, one to enormous riches, the other to every thing this world can give, — rank, fame, and fortune. They see, likewise, men who have merited their advancement by the exertion and improvement of those talents which God had given them; and I see not why they should avoid the mirror."

Though the commanding talents and flexible principles of Earl Rosslyn had raised him to the highest elevation of rank, fame, and fortune, the notoriety of his character, as a crafty and versatile politician, deprived him of lasting respect and

esteem. First a whig, then a tory, again a whig, and once again a tory, he seems to have turned in his political bias almost as mechanically as the ship at anchor, which veers round its prow at flood tide. A large share of obloquy, the just requital of fortunate suppleness and selfish tergiversation, fastened on his name through life. "Wedderburn," said the slashing Junius, in a singular phrase, "even treachery cannot trust; his reputation for slyness is proverbial." "I own," he writes in another letter, "I am not apt to confide in the professions of gentlemen of Scotland, and when they smile I feel an involuntary emotion to guard myself against mischief." Lord Loughborough used to relate a curious instance of the disesteem in which Scotsmen were held (a prejudice which may partly account for the obloquy that fastened on his name) at the period of his first success in London.

In 1769 Home wrote a tragedy called Rivine, the name of the heroine being taken from one of the fragments of Ossian. Garrick, afraid of the prejudices then prevalent in London against Scotsmen and Scottish subjects, changed its name to that of the Fatal Discovery; and, more effectually to disguise its origin, procured a young English gentleman from Oxford to personate the author. The success of the play drew its real author from his covert. Home declared himself, and the piece languished only a few nights more. The lucky Scot, Lord Loughborough himself, incurred the rebuke of Miss Burney for presuming to criticise some characters in her novels, the Brangtons, as low, but was re-admitted to favour on the, for him fortunate, hypothesis that he was a native of Scotland, and that the Scottish nation have no genius for wit and humour! What a strange discovery for the native land of Buchanan and Burns and Walter Scott.

In the language of Butler, he had seldom justice done to his heart or his talents. "We have mentioned," writes that amiable lawyer, "his dereliction of the whigs, to whom he first attached himself in politics, and its having raised against him a prejudice, from which he never recovered. Long he ranked among the warmest and ablest friends of Catholic

emancipation; but in an evil hour he sacrificed them, at the commencement of Lord Grenville's administration, to the cry of 'No Popery,' and instilled into the royal ear the scruples of the coronation oath. It is said his lordship afterwards repented of this." The worthy author of the preceding paragraph shows unconsciously what injustice must have been sometimes done to Lord Rosslyn. His voice could not have swelled the cry which drove the Grenville cabinet from office, for it was mute in death a full year before the commencement of that administration.

The proneness of friends to impute bad motives to his conduct is also amusingly shown in a story told by the late Lord Erskine. "In walking home, one dark November evening, across Hampstead Heath, I met Loughborough coming in an opposite direction, apparently with the intention of meeting me. He was also on foot. 'Erskine,' he said, 'I was seeking you, for I have something important to communicate to you.' There was an unusual solemnity in his manner, and a deep hollowness in his voice. We were alone. The place was solitary. The dusk was gathering around us, and not a voice—not a footstep—was within hearing. I felt as Hubert felt, when John half opened, half suppressed, the purpose of his soul, in that awful conference which Shakspeare has so finely imagined. After a portentous pause, he began,—'Erskine, you must not take Paine's brief.' 'But I have been retained, and I will take it, by G—d,' was my reply. The next day I was dismissed from the Prince's council."

The story, thus pompously given, resolves itself into the simple fact, that Lord Loughborough went out of his way to give a valuable caution to an old friend on the point of doing a very imprudent thing, and got compared to a villain hinting assassination for his pains. But still, making every allowance for mistake and misinterpretation, there will remain no little insincerity to explain, no slight inconsistency to condemn. The companion of Wilkes and friend of Lord North, the assertor of the Prince's absolute right and defender of the King's prerogative, the counsellor of Fox and colleague of Pitt, could not be united in the same person without a

flagrant breach of consistency. He kept his place at court, like the first Earl of Wiltshire, by being a willow, not an oak. Out of such pliant materials may be made the wearers of green and red ribbands, viscounts, earls, chancellors; but of harder and firmer texture must that statesman be wrought, who would take large, disinterested, and prospective views of the interests of states, and would wish to be revered by future generations as a single-minded patriot, and philosophic lover of his country.

As a legislator Lord Rosslyn attempted more than his predecessor, but that was not much. Perceiving the ruin in which many families of opulence had been involved by the facility of granting annuities,—young men of large fortune being in their minority the common prey of usurers, who granted them annuities on the most extravagant terms,—he introduced and carried a bill to remedy the evil. "A young man," to use his own eloquent language, "in the disposal of an annuity, is in a state of debauch; for it is like dram-drinking, it irritates and inflames and deadens." His bill enacted that no annuity should be valid from a grantor under twenty-one, and contained many useful provisions; but with an ill success not unfrequent even among able lawyers when framing acts of parliament, the wording of the statute was too imperfect fully to attain its object. It may be consolatory to those county members who, in the ardour of patriotism, are fond of trying their hand at bills, and get laughed at for their pains, to be informed, that the Annuity Act, framed and brought into Parliament under the highest legal auspices, was repealed on account of its inaccuracy; that the repealing statute has been explained and amended by three subsequent acts, and even yet stands in need of further revision!

The favourers of exact morals will approve of a standing order which the Chancellor introduced, that a clause should be inserted in every divorce bill to prevent the marriage of the adulterer with the adulteress. It is to be regretted that a clause of such excellent tendency, whatever hardship it may work in some few isolated cases, should have become a mere matter of form, being regularly inserted by the Lords,

and as regularly rejected by the Commons. Lord Auckland's bill for making adultery punishable as a misdemeanor met also with his approval, and was adopted by the Lords, but thrown out in the lower house. In the animated discussion which took place on this measure, Lord Clare, at that time Lord Chancellor of Ireland, declared that, in his opinion, marriage was a mere civil contract: and that, where that contract was declared void by a competent jurisdiction, the parties were at liberty to marry again. The Chancellor, at the earnest and particular request of Bishop Porteus, took occasion to give a direct contradiction to Lord Clare's assertion, by the averment that marriage was not only a civil institution, but also a divine ordinance, and that it was uniformly so considered by the laws of England. Lord Rosslyn advocated temperate legal reforms, and suggested the expediency of a measure which, in vain attempted by Sir Samuel Romilly, has at length (under the auspices of his son) received the tardy consent of the legislature—the subjecting freehold estates to the payment of simple-contract debts. At his instance, also, when compelled to confirm the provisions of the will of the sordid and selfish Thellusson, who sinned in his grave by defrauding his immediate descendants, a bill was passed, with the unanimous approval of the legislature, to prevent wealthy testators from suffering their hoards to accumulate without division beyond a given period; and to fix a limit which, whilst it consulted the general interests of the community, should not interfere too arbitrarily with the rights of individuals over the disposition of their property.

In common with the other judges of the day, Lord Loughborough entertained conscientious but unfounded scruples to changes in the criminal law. When a bill, drawn up by Mr. Wilberforce, directing the judges to order the bodies of all convicts for burglary, robbery, &c. to be given to a surgeon for dissection, had passed the Commons, and was introduced into the House of Lords, he dwelt with much force on the impropriety of men not conversant with law turning projectors in respect to it, and, in moments of vivacity, coming forward with raw, jejune, ill-advised, and imprac-

ticable schemes for the alteration of the mode of distributing and carrying into execution the criminal justice of the country. "As Attorney-General he had always thought it his duty to check the introduction of every such project; and in one instance, which he particularly remembered, where it had happened that a convict for a great offence, in suffering the sentence of the law, was accidentally deprived of his life (in the pillory), on that occasion a gentleman of known humanity (Mr. Burke) proposed to change the mode of the punishment, and make it death in future. He at the time repelled the project; and, though he was satisfied that its having been proposed arose from the most laudable motives, and that it was with a view to make the sentence of the law more lenient than it was, he had been then, as he now was, of opinion that the judges were the persons with whom alterations of the conduct of criminal justice ought to originate." This opposition did not proceed from any callousness of heart to the last penal consequence of crime, but from moral conviction; for we have the candid testimony of a political opponent, Dr. Parr, to the good fruit of his humanity on a memorable occasion.

"Lord Rosslyn, disregarding the difference of our political sentiments, at my request gave the fullest effect to my exertions for saving an unfortunate person who had committed the crime for which he was on the point of suffering death, but was guiltless of some aggravations hastily imputed to him, and who, by the diligence, sobriety, and honesty which he has uniformly manifested for the space of twenty-five years from the time of his deliverance, has amply repaid to society the mercy shown to him by the executive government. In genius and magnanimity," says the grateful doctor, "Lord Rosslyn towered above his colleagues."

He strongly approved of the statute 25 Geo. 2., which, in cases of murder, destined the body of the criminal to dissection. The repeal of this act may be deemed of doubtful advantage, for it was found, according to the testimony of this experienced judge, most serviceable to the community. Criminals, hardened in vice and practised in villany, had stood with a firm countenance during trial, and had even

heard sentence of death passed on them without emotion: but when the judge informed them that their bodies were to be deprived of sepulture, and that they were to undergo a public dissection, their countenance changed, they grew suddenly pale, trembled, and exhibited a visible appearance of the extremest horror. This sort of exhibition had always made a forcible impression on the minds of the by-standers, and, he had not the smallest doubt, was attended with the most salutary consequences. His objections to another part of the bill, which proposed to change the barbarous punishment of women convicted of high and petty treason from burning to hanging, are entitled to much less weight, and, however specious, revolt the more humane and liberal feelings which now happily prevail. "He saw no great necessity for the alteration, because, although the punishment as a spectacle was rather attended with circumstances of horror likely to make a more strong impression on the beholders than mere hanging, the effect was much the same, as in fact no greater degree of personal pain was sustained, the criminal being always strangled before the flames were suffered to approach the body; and this sentence, such as it was, was rarely inflicted, convicts being generally indicted on the other statutes, which made the convict subject to transportation only; so that burning for coining was not inflicted above once in half a century."

The feelings of the man of humanity were in perpetual conflict with the callousness of the lawyer, and it is to be regretted that he did not give them fairer play. With the benevolent object of improving the condition as well of criminals as of debtors, Lord Rosslyn allowed a little treatise of his to be published in the year 1793, "On the State of English Prisons, and the Means of improving them."

He had acquired an estate in Yorkshire by his first marriage with Miss Dawson, on which he occasionally resided, and qualified as a magistrate for the West Riding. In this character he took an active part in the establishment of a police within the house of correction at Wakefield, a prison which is quoted at the present day as a model of discipline. His work is written in a plain, forcible, business-

like style, and contains many useful hints and observations. He suggests that houses of correction should be so constructed as to prevent the loss of liberty from being aggravated by any unnecessary severities, and shows that the old style of building ought not to be adhered to. "The common prisons were formerly placed in the fortresses, and the comforts of the prisoners less attended to than their safe custody. When houses of correction were first erected, there were no other models for their construction than the gaols, and of course they were formed on a plan to keep the prisoners safely with little attendance, in a narrow space, and with few openings for light or air. The close air and squalid condition of a prison, 'squalor carceris,' were by many considered as the necessary attributes, and even men of respectable judgment have supposed, in the case of debtors, that the filth of the prison was a proper means of compelling them to do justice to their creditors. This prejudice (for it is not entitled to be called reasoning) is no less inhuman than senseless, for it supposes all debtors able but unwilling to pay; it afflicts those most who deserve it least—the men of sensibility; and it forgets that habit, with most men, deadens the disgust they feel from the loathsomeness of their situation." The humane magistrate draws a frightful picture of many houses of correction, and suggests valuable improvements. "To a place so circumstanced, loathsome with disease, where all the day is consumed in perfect idleness, and every vice is huddled together, every good habit destroyed, and every bad propensity promoted, to commit the youth of either sex, and that for the purpose of correction, is a grievous reproach to the laws of a civilized country! What then is the remedy to be found for this evil? It is short and plain;—Work. It has been and may again be said, how shall every one be compelled to work, when it avails nothing? The answer is easy. By seclusion and spare diet. Seclusion does not mean absolute and profound solitude, which ought to be reserved for very serious cases, and applied with due discretion: it means, that during the night there should be an entire separation, and in the day that the intervals of communication should

be short and interrupted, and under the eye of the keeper, and that all the continued hours of work should be solitary. There is nothing in this state which an enfeebled mind cannot endure, but there is enough in it to produce a sober temper in any mind capable of being reclaimed." The prudent caution of the pamphlet, as to the size of the new prisons, will not be held in slight regard by those who have seen the Penitentiary at Millbank heave its heavy battlements from the waters like some ancient fortress, and have heard its cost computed at 250,000*l.* "It is with reluctance that one finds fault with schemes so perfectly well intended as the new prisons, but certainly they have been erected on too large a scale. Several houses of correction, in particular divisions, are of more benefit than one great house for a whole county. Besides, the success of the reform will render a part of these buildings useless, for the number of the prisoners will be exceedingly diminished when they are kept in proper order." This prophecy must be regarded as visionary, notwithstanding the diffused education of the lower orders; but it is pleasant to know that increased civilization has accomplished the concluding wish of the philanthropic judge. "If this system of labour and seclusion could be established fully, it would have more permanent effect to reform the offender, and to deter others, than transitory public examples; and we might hope speedily to erase from the law a number of capital sentences, which a judge is obliged to pronounce, when the greater part of the audience knows they are not meant to be put in execution, lessening thereby the impression which such sentences ought to make, when the law should be armed with all its terrors."

Sir Nathaniel Wraxall would fain clothe Lord Rosslyn with higher attributes of authorship than the penning this little treatise. "During many years of his life," writes that credulous baronet, "I nourished a strong belief, approaching to conviction, that the late Chancellor, then Mr. Wedderburn, was the author of Junius. Some persons of credit have recognized the hand-writing of the letters to be that of Mrs. Wedderburn, his first wife." These persons of credit

were, however, unfortunately Scotsmen; and until they can advance some more probable testimony, we must live in the faith that "aut Francis aut Diabolus" was the author of those stinging satires, and that the "land of cakes" should be content with the honour of having produced one Great Unknown!

The private character of Lord Rosslyn appears to have been amiable, but rendered less attractive in society by coldness and reserve. He is complained of (in Laurence's letters to Burke) as not direct. His extreme caution divulges itself on the report that the civilian was about to write the life of the great statesman, lest, perchance, any unguarded phrase should have escaped from him, which might be inconsiderately divulged. He wrote in alarm to say that he thought it contrary to morality, that any letters should appear, which relate to intimate and familiar conversations, where in mutual confidence the parties concerned express to each other their sentiments and opinions on men and things. "I have never seen or heard," writes Dr. Laurence in reply, "the morality of Atticus impeached, for publishing the valuable series of Cicero's letters. They may be given to the public, if the situation of things to which they refer has actually passed away. I have ever understood that your lordship's principal motive for consenting to take office alone, after you had twice refused it, was the impossibility of finding any steady support in doing your duty to your country out of power."

Dr. Laurence was too deeply impressed with the grandeur of his subject to write hastily;—death overtook him at the very commencement of his task;—the life of Loughborough's quondam friend was abandoned, and the wary statesman could breathe freely once more.

Beloe, an attached client, gives, in his "Memoirs of a Sexagenarian," a delightful portrait of his private hours. 'The manners of the Chancellor were,' he says, 'conciliating and agreeable,' displaying, according to his graphic description, the demeanour of a highly-polished gentleman, who bore his honours without insolence, or oppressing his inferiors by an affected condescension. As patron of the King's livings he displayed a kindness in his mode of granting a favour,

which greatly enhanced its value. He would often say, when he gave away preferment, and more particularly to those whose merits were their only recommendation to him, "Go to my secretary, and desire him to prepare the presentation for my fiat immediately, or I shall have some duke or great man making application, whom I shall not be able to refuse." He was particularly desirous of so giving his preferment away, that, if practicable, the parishioners themselves might be satisfied. More than once he has disappointed friends for whom he intended to provide, in consequence of petitions from parishioners in favour of some meritorious curate. His courteous manners formed a striking contrast to the rude and unfeeling deportment of his predecessor, who seemed to take a mischievous delight in sporting with the feelings of the clergy. In this spirit Lord Thurlow asked Beaufoy, who, on coming to dinner, introduced a Yarmouth curate, why he brought his d—d parson with him. "Show him in—show him out," were the short salutation and dismissal, which he thundered in the ears of an unlucky clerical petitioner. Lord Rosslyn, on the contrary, always received the humblest clergyman with graciousness and affability, and has been heard to lament that his situation as Chancellor was sometimes painful to him, from his being compelled to refuse petitions which had the strongest claims on his humanity. He would facetiously observe that his great livings gave him no trouble, their designation was either anticipated or easily determined; but for his smaller livings he had always a multitude of applications, and seldom or ever one without seven or eight small children at the end of it.

He once had a noble suitor, and answered him as nobly. Sir Horatio Nelson, in 1797, addressed the following letter to the Chancellor:—

"My Lord, "141, Bond Street, October 12, 1797.

"In addressing a letter to you some persons may think me wrong, and that I ought to have chosen the interference of a friend; but feeling a conviction, that if what I have to ask is proper for your lordship to grant, that I require on the present occasion no interest but your own opinion of my endeavours to

serve the state. I therefore enclose my request, which, if your lordship has the goodness to comply with, will be a small provision for the youngest son of my venerable father, and a lasting obligation conferred upon

" Your most obedient servant,
" HORATIO NELSON."

The request was, to give his brother, the reverend Suckling Nelson, one of the livings held by his father, on his father's resignation of it.

The Chancellor's consent was conveyed in terms that did him honour.

" Sir,

" You have judged perfectly right in the mode of your application to me; any interference would have much diminished the satisfaction I feel in acknowledging the perfect propriety of your request, and the just title your great services have gained to every mark of attention which, in the exercise of a public duty, it is in my power to express.

" Yours, &c.,
" L."

Learned himself, and a real patron of learning in others, he did not scruple to serve a scholar from the circumstance of his differing in opinion materially from himself on certain political questions of great magnitude. For example, nothing is more notorious than the warm, strenuous, and active part which he took against Mr. Hastings; yet he not only endured, but admitted to his table, and in some degree to his confidence, those who, he well knew, had been zealous advocates of that illustrious person, who had spoken, written, and, if we may so say, had fought in his behalf. Other instances might be adduced. Perhaps he is the only Chancellor, at least of modern times, who gave preferment to literary men merely as such, and with no other introduction or recommendation than the merit of their works. Lord Thurlow, indeed, had the character of being friendly to scholars; but there is no example on record of his having acted with similar, and if the expression be warranted, with such disinterested liberality, unless his patronage of Potter, the translator of Æschylus, be excepted, to whom he gave a prebendal stall in the cathedral of Norwich. He had been

Thurlow's schoolfellow, and came to London to make personal acknowledgments of his gratitude, but had the surly communication, "Let him go home again, I want none of his Norfolk bows."

The two ex-chancellors were in every particular directly opposed, the one to the other, in temper, manners, and mind. The one was as rough, direct, and manly, as the other was gentle, fastidious, and insinuating.

In two points only could they be said to approximate in the most remote degree, in mutual hatred, and in generosity to the distressed. Even after Thurlow had been driven from office, the two jealous rivals were constantly seeking to countermine each other. When, in the autumn of 1792, Lord Thurlow had advised the Prince of Wales to retire from public life for a time and appropriate the greater part of his income to the payment of his debts, Lord Loughborough interposed with a soft suggestion that the plan savoured strongly of French principles, and it was crushed at once. "In his retirement, the bitterest circumstance to Lord Thurlow probably was, that Lord Loughborough became his successor. For Lord Thurlow most cordially hated his rival, holding him cheap, as a lawyer, yet fearing him as a ready and popular opponent in debate. Lord Eldon used to relate that, on one occasion, when Lord Loughborough was speaking with considerable effect, about a matter on which Lord Thurlow had a strongly adverse opinion, but which he had not studied in sufficient detail to be prepared for refuting his ingenious opponent, Lord Thurlow, as he sat on the woolsack, was heard to mutter, 'If I was not as lazy as a toad at the bottom of a well, I could kick that fellow, Loughborough, heels over head any day in the week.'"

In the anecdote book, Lord Eldon says, "George the Fourth told me, as another instance of his (Thurlow's) contempt of Loughborough as a lawyer, that Thurlow told him, when Prince, that the fellow had the gift of the gab in a marvellous degree, but that he was no lawyer;" and added, "In the House of Lords, I get Kenyon, or somebody, to start some law doctrine in such a manner that the fellow must get up to answer it, and then I leave the woolsack and

give him such a thump in his breadbasket that he cannot recover himself."

Lord Thurlow survived his lucky rival more than a twelvemonth, and on hearing of his death at Bath, said candidly, "Well, I hated the fellow, he could *parlez-vous* better than I could; but he was a gentleman!" His dislike afterwards vented itself in a bitter gibe. Being informed, we know not how truly, that George the Third, who had been labouring under mental hallucination, exclaimed, on Lord Rosslyn's death, "I have lost then the greatest scoundrel in my dominions!" "Said he so," exclaimed Lord Thurlow, "then by — he is sane!"

It redounds to the honour of Wedderburn, in earlier days, when eating his way to the bar, that he should have been the first to mention the subject of Dr. Johnson's pension to Lord Bute. He was but slightly acquainted with the great moralist, and having heard much of his independent spirit, and of the downfall of Osborn the bookseller, might have suspected that his benevolence would be rewarded with a folio at his head. He ventured, however, and, in Sheridan's phrase, successfully rung the bell.* Gibbon, in his memoirs, speaking of the honourable connections he had formed, says, "I may justly be proud of the friendship of Mr. Wedderburn; by his strong recommendation, and the favourable disposition of Lord North, I was appointed one of the Lords Commissioners of Trade and Plantations, and my private income was enlarged by a clear addition of between 700*l.* and 800*l.* a year."

Their friendship was interrupted only by death. Gibbon writes to Lord Sheffield only six weeks before his last illness: "The man tempted me, and I did eat; and that man is no less than the Chancellor. He recals me (the third time this week) to a dinner to-morrow, with Burke and Windham, which I do not possess sufficient fortitude to resist."

Maurice, the learned author of Indian antiquities, was at Lord Rosslyn's instance induced to dedicate his work to the proud premier Pitt, too proud to be the patron of literary men. The grateful scholar called in Downing Street to

* The last hours of Shenstone were gladdened with a pension which Wedderburn procured from Lord Bute.

present the minister with a copy of his book, and thank him for the permission. "The honour, Sir, was to me," said Mr. Pitt laconically, and with a slight bow dismissed him. The munificence of the Chancellor repaid the mortified dedicator for this barren notice, and secured an easy provision for his latter years in the British Museum. When the Benchers refused the use of the hall of Lincoln's Inn to Sir James (then Mr.) Mackintosh for the delivery of his Lectures on the Law of Nature and Nations, Lord Rosslyn, with more liberality, interposed a request that they would grant permission, and on their compliance with his wishes led the fashion of hearing and eulogizing that able and philanthropic jurist.

The penetrating mind of the Chancellor (in this instance more far-sighted than Pitt) saw the absolute necessity that a popular government lay under of giving some encouragement to literature, and leading public opinion. Under his auspices were started the Sun newspaper, and the British Critic, a periodical which in ability and power anticipated those influential political organs—the Edinburgh and Quarterly Reviews. To the perusal of miscellaneous literature Lord Rosslyn was through life devoted, and loved the society of literary men. No work of particular eminence appeared without his desiring to know the author, if he was not already acquainted with him; and when in the enjoyment of his exalted office, he would often deny himself to individuals of high rank, and prefer spending the evening in social conversation with men of low estate, but, withal, men of literature. He was very curious with respect to all new publications of voyages and travels, and exercised a scrutinizing jealousy and suspicion on the subject of their accuracy. He knew Bruce well, and respected him, but often indulged in good-humoured laughter at some of the more wonderful parts of his narrative. Beloe was once reading to him from Park's book of Travels in Africa the following adventure:—"My guide, who was a little way before me, wheeled his horse round in a moment, and calling out something in the Foulah language, which I did not understand, I inquired in Mandingo what he meant. Wara

billi billi, a very large lion, said he, and made signs for me to ride away. But my horse was too much fatigued, so we rode slowly past the bush, from which the animal had given us the alarm. Not seeing any thing myself, however, I thought my guide had been mistaken, when the Foulah suddenly put his hand to his mouth, exclaiming, Soubali an allahi! God preserve us! and to my great surprise I then perceived a large red lion at a short distance from the bush, with his head crouched between his fore paws." On hearing this last part of the sentence Lord Rosslyn laughed heartily, and exclaimed with good humour, "I suppose it was the red lion of Brentford!"

There is recorded another amusing instance of his good-humoured pleasantry—the ascribing a fictitious speech to Lord Erskine, to quiz his habit of self-praise.* "The egotism of that eminent pleader is proverbial, and so happily was his manner hit, rather than caricatured, by the Chancellor, that the audience deemed his inventive faculties a mere exercise of memory. Erskine, he said, giving an account of some public meeting, opened to this effect. 'As to me, gentlemen, I trust I have some title to give my opinion freely. Would you know whence my title is derived? I challenge any man amongst you to inquire! If he ask my birth—its genealogy may dispute with kings! If my wealth, it is all for which I have time to hold out my hand! If my talents—no! of these, gentlemen, I leave you to judge for yourselves!'"

The considerate kindness of Lord Rosslyn to those who required it, was not less conspicuous than his wit. Having a scholar at his table, who had treated of multifarious subjects with a venal pen, Lord Rosslyn introduced the subject of his different works, and addressing him, observed, "I liked such a book of yours exceedingly, it did you much credit; but what could possibly induce you to print"—here he named another book. The guest bowed, and merely replied, "res angusta domi." Lord Rosslyn replied, "I am perfectly satisfied with your answer." †

* D'Arblay's Memoirs of Dr. Burney. † Beloe's Sexagenarian.

It has, however, been imputed to him, as matter of reproach, that he gave the literary men whom he distinguished a pittance only; and did not, even with respect to the few for whom he professed the greatest regard, make any efforts to raise them to the more elevated honours of their profession, being of opinion, with Goldsmith, that authors, like race-horses, should be fed, but not fattened. Whether this reproach be justly merited or not — and never was man more libelled by the race of scribblers, from Whitehead and Churchill to Junius and Sheridan, than Lord Rosslyn — many instances remain to prove that he was exceedingly liberal to members of his own profession, and to scholars in distress. He sent that amiable lawyer Fearne, when in embarrassed circumstances, a present of a hundred guineas, and concealed the gift of a like sum to poor Hargrave, the learned editor of Coke-Littleton, under the name of a loan. The ex-chancellor of France, De Barretin, on his emigrating to England from the terrors of the revolution, was supported at his brother chancellor's expense. He allowed De Barretin 600*l.* a year, and gave him his handsome house, which he had with his first wife, to reside in, of course rent-free. The quarterly payments of 150*l.* were continued till the peace of Amiens, when the sum advanced amounted to 5,400*l.* When the chancellor came to take leave, he brought with him a bond for that sum. Some of his relatives were able and willing to repay it. Lord Rosslyn expressed himself much hurt; he did not like making it a business transaction.

An excessive disregard of money is said to have been a prevalent defect in his character, that his generosity proved a bane, for want of prudence. He is represented to have been always in pecuniary difficulties, and has been unjustly suspected of gambling by those who knew that the state carriage was sometimes missing, and could not find, in improvidence and absence of forethought merely sufficient cause for his distress. It is a curious proof of the luxurious wants of society, and the exactions which they require, that, during the present century, the heads of the church and the law, notwithstanding their ample endowments, should have been subjected to the indignities of

embarrassed fortune, without any marked expensive habits of their own.

Happily for himself, Lord Rosslyn was rescued, shortly before his death, from the sceptical indifference in religious subjects which he had imbibed in his youth amid that clever but misguided band of metaphysicians who infected the literary circles of Edinburgh with their unbelief. It is fearful to recal the prevalence of that deadly poison. The tenets of Hume had deadened some of the leading members of the church of Scotland, and tainted the bench. Lord Kaimes dabbled in scepticism, and Lord Monboddo indicted ancient metaphysics, which were said to be indeed so ancient that they might have been written before the Christian era. From the virus that inoculated his colleagues the Chancellor had not escaped, but owed his release at length to a providential circumstance, which is thus related in a letter from the Reverend Mr. Gisborne to Wilberforce:—

"April 17, 1805.

"Dr. Randolph, in the summer of 1803, gave me an extremely interesting account of his interview with the late Lord Rosslyn at Bath. The doctor had no acquaintance with Lord Rosslyn before his lordship's last visit to Bath, and probably they would never have been acquainted, but for the happy circumstance of Lady Rosslyn's regular attendance at Laura Chapel. One morning, after service, her ladyship requested, with much earnestness, that the doctor would call on her lord, as she very much wished them to be acquainted, intimating pretty strongly, if my memory does not deceive me, that she hoped the doctor would seize every opportunity of introducing religion in the course of their conversation. The doctor complied, and, during the first four or five of their interviews, his lordship eagerly entered upon the proofs, external and internal, of Christianity, and, to use Randolph's own expression, invariably took the infidel side of the question. His lordship managed his arguments, I believe, with much dexterity, and Randolph confessed that he never found himself more closely pressed. Lord Rosslyn, however, was in perfect temper, and appeared evidently on the search for truth, which subsequent circumstances served fully to prove. After several interviews, his lordship requested Dr. Randolph to recommend to him some eminent work upon the divinity of Christ, and Burgh's answer to Lindsey was accordingly put into his hands. This book, under the blessing of

God, seems to have been the one thing needful, for his lordship repeatedly avowed his entire change of views, and the extinction of his doubts, from the serious perusal of this work. He then expressed his anxiety that Dr. Randolph should write to Burgh, requesting that the work might be reprinted, and that a preface might be inserted by him, addressed to his lordship, declaratory of his lordship's delight, gratitude, &c. Lord Rosslyn also declared that he especially wished such a preface to be inserted, from the ardent hope that it might awaken curiosity in the minds of his law brethren, and thus excite their desire to peruse a work which had accomplished such a change in his own heart. Dr. Randolph declined to volunteer this detail, as no attack had been made on Lord Rosslyn's religious principles; for my part (writes Gisborne) I can only say that the generality of people believe he had none."

Devoid of sound religious principle, he thus pursued a prosperous and tortuous course, which has heaped upon his head the following caustic condemnation: — "The success of such men may not conceal, behind the glitter of worldly prosperity, the baser material with which the structure of their fortune is built up. A professional and political life, so eminently prosperous, which rolled on in an uninterrupted tide of worldly gain and worldly honours, but was advanced only by shining and superficial talents, supported by no fixed principles, illustrated by no sacrifices to public virtue, embellished by no feats of patriotism, nor made memorable by any monuments of national utility, being at length closed in the disappointment of mean, unworthy desires, ended amidst universal neglect, and left behind it no claim to the respect or the gratitude of mankind, though it may have excited the admiration or envy of the ignoble vulgar." *

We cannot dissent from this severe notice of the career of Earl Rosslyn — eminent in public, engaging in social, and amiable in private life. It may excite surprise that the memory of a man should not be held in higher regard who swayed the House of Commons as an orator during the most eloquent period of its annals, who confirmed the national councils by his wisdom in several emergencies of difficulty

* Lord Brougham's Statesmen.

and danger; and, presiding over courts of law or equity for the long term of twenty-one years, by his impassive temper, learning, and deportment, conferred dignity even on the highest office of a judge. The reason of the general disesteem into which his name has drifted will be found to be the want of good faith and absence of political rectitude which marred the features of his character. He might have been, in the proud eulogy of Bishop Lowth, "summo in loco vir summus;" he was content with the situation "summo in loco," without the character. He might have trod the broad and open path of honour as a consistent statesman;—he preferred the bye-roads to a court, and wound his way through them with the cleverness of a trickster. His failings and their punishment should read a memorable lesson to public men. Having many of the essential elements of greatness, he rose to the highest elevation of rank without being duly honoured, and diffused pleasure in society without winning esteem.

CHAPTER VII.

THE LIFE OF SIR VICARY GIBBS.

DEVONSHIRE has been from early times distinguished as the nursing mother of eminent lawyers. It was long since remarked by Fuller, that "this county seems innated with a genius to study law, none in England (Norfolk alone excepted) affording so many legal men. Cornwall, indeed," "hath a famine, but Devonshire makes a feast of such, who by the practice thereof have raised great estates." These occur among other great names:*— the elder Fortescue, Aland, an able judge, Sir H. de Bathe, Sir Thomas Littleton, Sir John Dodderidge, Sir John Maynard, and Peere Williams; Sir Henry Bathe, one of the Justices of the King's Bench; Henry Bracton, Chief Justice of England under Henry the Third; Dr. Cowell, Dean of Arches, called by Coke in his clumsy raillery at the courts of civil law, Dr. Cowheell; Sir J. Doddridge, who said that old as he was he would go to Tyburn on foot to see a man hanged that should prefer money for a place of a judicial nature; Fitz of Fitzford, bencher of Lincoln's Inn in the first year of Henry VI.; Sir J. Fortescue, with his knightly motto, 'Forte scutum salus ducum,' in whose days the four inns of court contained each 700 students, and the ten inns of Chancery 100 each; and Sir John Glanvil, 'who administered justice according to his oath indifferently to all, with that uprightness and honesty, as one conscious to himself he must one day come to judgment, and have all his judgments judged over again.' Another century has added to this proud array the still more noble names of Camden, Dunning, Buller, Lord Chancellor King, Gifford, Heath, and Gibbs, the four last of whom are natives of Exeter. A still more illustrious forensic name—greater than the greatest of them all—is beginning to pass away from the

* Prince's Worthies of Devon.

lips of men; but not till his grateful country has determined to perpetuate, by the erection of a statue, the memory of Devon's gifted son, the perfect lawyer Sir William Follett.

Sir Vicary Gibbs was born at Exeter in 1751, in the Cathedral close, within a few doors from the birth-place of John Heath, his future colleague on the bench. He was the son of a surgeon and apothecary, who had practised in that city for many years, and laboured hard—such is the common lot of his profession—for a small competence. The acuteness of young Gibbs, which early developed itself, tempted his father to incur the expense of sending him to Eton, then under the able care of Dr. Barnard, the reputation of whose talents had already raised the number of scholars from 300 to 500. The numbers are now risen, under the worthy auspices of Dr. Hawtrey, editor of the Arundines Cami, to the unprecedented amount of 800. The great public schools have been always especial favourites with ambitious parents, from the facilities which they afford to the establishment of eligible friendships. But the character of the young Etonian was ill adapted to further any such scheme of promotion. "The boy's the father of the man," and he proved himself both too independent and too testy to become a tuft-hunter. He formed intimacies, indeed, with many who like himself pushed their way in after-life into high stations, amongst whom may be mentioned Dr. Rennell; Plomer, the Vice Chancellor; Cornwall, Speaker of the House of Commons; Dr. Goodall, and Mr. Justice Dampier: but he sought no patrons, and found none. The apothecary's son had neither sprightliness nor humour to atone for deficiencies of birth, and that aristocratic little community made no allowance for the waywardness of a plebeian fag. He soon gained distinction, however, by the sure test of elegant scholarship, his composition of Latin verse. A pretty classical collection, the Musæ Etonenses, contains some pleasing specimens of his proficiency, but shows at the same time the mechanical skill without the mind of a poet, and proves to demonstration that there was no "sweet Ovid lost" in Gibbs. At sixteen he was elected scholar of King's College, Cambridge, on Lord Craven's foundation—a scholarship "passing rich"

with 25*l.* a year. The value is inconsiderable, but the repute which these scholarships hold in the University may be inferred from the fact, that the scholar who preceded young Gibbs was Seale, and his successor Richard Porson. King's College in his time enjoyed the privilege—if it may be termed a privilege—of its fellows taking their degrees without a public examination; a boon to the slothful, a privation to the emulous. A syndicate has lately abolished this injudicious exemption, and permits the ambitious scholar to win that distinction in the senate house, of which our young student justly thought himself defrauded. He took his bachelor's degree in 1772, and was elected a fellow of his college, but did not reside long, being eager to enter himself at Lincoln's Inn and study for the bar. The tradition of his excellence as a Greek scholar still lingers in the University.

To a student just graduated at Cambridge, who has rejoiced in classical themes and classical associations, the first study of the law must be scarcely less repulsive than the atmosphere of the dissecting-room to a noviciate in medicine, fresh from the purity of country air. The art and mystery of special pleading, however logical and inviting scrutiny in its present amended form, appears at first to substitute an uncouth jargon for the ancient models of thought and style—to have no sympathy with the feelings or fancy, and to dispense with all literary acquirements. The system was at that time darkened with vain and unprofitable subtleties, with unmeaning fictions, infinite minuteness, and wearisome prolixity. The technical terms colour, continuance, negative pregnant, certainty to a common intent, duplicity, common bar, and many others, usque ad nauseam, tend at first to vex the ear and dispirit the learner.* "In the study of the law," writes Mr. Gray to his friend West, "the labour is long, and the elements dry and uninteresting; nor was ever anybody (especially those that afterwards made a figure) amused, or even not disgusted, at the beginning." It was natural that Mr. Gibbs should feel this disgust—he had the merit of

* A country gentleman asked an eminent special pleader if he thought his son would succeed in that walk. "*Sir,*" was the pithy reply, "*can your son eat sawdust without butter?*"

having felt and mastered it. To discipline his mind to perfect legal habitudes of thought, to acquire a thorough knowledge of that exact science, in the development of whose principles the most subtle intellects have been exercised, was the employment of his morning and midnight hours, a diligence the more exemplary from its contrast with the previous license of King's, which had no senate-house to prepare for, no January matins to dread. We have seldom read of a student who devoted his whole heart and mind with more perfect singleness of purpose to the study of his profession. The "res angusta domi," straitened means, came in aid of his ambition. He had no connexion to force business, nor wealth to supply its absence, and knew that he must depend entirely on his own personal competency for success. During the three years of his pupilage he carefully abstained from all clubs, either of a literary or social character, was a stranger to the west-end and the parks, and in general emerged from his chambers only once in the day to eat in haste and alone his half-commons of minced veal, and then earth himself again in the midst of precedents and reports. "It is impossible," said Sir Joshua Reynolds to his pupils, "that anything should be well understood or well done that is taken into a reluctant understanding, and executed with a servile hand." An occasional Sunday at the villa of his friend Dunning, who appreciated and loved to encourage the talents of his young countryman, an annual trip to Cambridge, and a visit to Eton at the Montem, formed the sum of Gibbs's dissipations and delights. When challenged by Mr. Scarlett, in mature life, with not making proper allowance for the impatience of an audience, (he was prosecuting some people for a tumult in a theatre,) which that gentleman ascribed to his ignorance of theatrical matters, he repelled the imputation on his dramatic taste with some heat, and gravely declared that he *had been* in a theatre, when a young man. He had gone there no doubt on some solitary festive occasion, looking like Cato the Censor at the Floral games. Yet we are assured by the late Mr. Adolphus that he loved the drama in private. "Prince Hoare dedicated his play of Indiscretion to Sir Vicary Gibbs. Many readers will think that Mr. Cruise or

Mr. Sugden might as well have dedicated their works on contingent remainders or on vendors and purchasers to Prince Hoare, or to Jack Bannister; but the great lawyer and elegant scholar to whom the play was dedicated, was eminently worthy of such a compliment. His knowledge of English dramatic literature was copious, his ability as a critic acute, but not leaning to severity, and they who have enjoyed the pleasure of his private conversation, may recollect with unbounded satisfaction the humour and spirit with which he used to recite passages and scenes from some of our best comedies, the Beaux Stratagem, the Alchymist, and Twelfth Night." We ought also to include in his recreations the military mania, by which he was seduced from the desk for a season, and acted as lieutenant under Erskine, at the time of the riots in 1780. "We were very proud of our arms," he said; "regimentals we had not, but very proud we were of our muskets." This corps, as it consisted of lawyers, rejoiced in the *sobriquet* of the Devil's Own. They mustered about seventy, but the military pride of Lieutenant Gibbs was not shared by the recruiting serjeant who had undertaken the task of drilling them. He complained that he could never make the lieutenant turn out his toes. "The front rank," we are informed by Mr. Espinasse, one of the troop, "graduated down from six feet two inches to five feet three or four inches,—from Dampier to Vicary Gibbs and the Honourable Mr. Kenyon. These two were often put by the serjeant into the rear rank on account of their unsoldierly appearance; and, as they were always paired off together, Dauncey gave them the whimsical names, from the Recruiting Serjeant, of Thomas Appleton and Costar Pearman."

But it is time to return with Gibbs from the spectacle of the field-day to the business of term. An eminent judge declared that he never knew of any one doing justice to the law, to whom the law did not in the end do justice; and his remark was verified in the instance of this eminent special pleader. He practised in that capacity nearly ten years, organizing slowly, but surely, a large connexion. "When the attornies have no one else to go to," he remarked with fretful naïveté, "they come to me! Other pleaders have the

luck of getting some easy cases. I never remember having had a single one. They were all difficult and complicated, and had nothing short about them but the fees." It requires no Œdipus to solve the mystery which puzzled him. He would not soften the hardness of his general manner to please either attornies or their clients, and therefore owed to merit, and not to favour, whatever cases were submitted to his inspection. He was ten years under Lord Kenyon's description of a rising young man of forty-seven before he ventured on being called to the bar; and we would strongly inculcate the like prudent caution, though not to the same extent, on students of the present day. Had he assumed the wig and gown as soon as by the rules of the inns of court he was competent to do so, he might have lingered for years amid the gentlemen of the back row, with no opportunities of displaying the legal knowledge he had hoarded up; becoming more shy and nervous, and therefore incapable, each succeeding term, from the consciousness of being slighted—feeling that hope deferred which makes the heart sick and is an utter weariness to the flesh—betraying too much anxiety to embrace the favourable occasion with effect, should a chance opportunity of distinction present itself—perceiving his temper begin to fail and his spirit to harden beneath the burden of unavailing regret—"eating his heart out," to use the expressive phrase of one who has suffered this suppressed agony, till, broken in health and spirits, he had been compelled to retire from the forensic ranks, crippled, and yet unwounded, the victim of ennui and neglect rather than of positive defeat.

Mr. Gibbs was called to the bar in 1784. He selected the Western Circuit, then led by Dallas, Jekyl, Serjeants Rooke and Bond, Lawrence and Dampier, and was retained, almost as soon as he had joined, in heavy mercantile cases, and cases for a special jury. The newspapers of that day did not furnish the ready passport to fame which they now dispense to aspiring juniors, and failed to inform the public that Mr. Gibbs opened the pleadings, and occasionally examined in chief. By his pleadings in chambers, the familiar acquaintance with the reports which he displayed in consultations, and by being,

in technical phrase, up to the points of a case in court, he stood in a few years in high estimation within, though unheard of and unknown without, the pale of his profession. It was accordingly with considerable surprise to the public, with none whatever to the bar, that his name appeared in conjunction with that of Erskine, as joint counsel for Hardy and Horne Tooke, in the memorable state trials of 1794. Mr. Tooke, than whom a more skilful or discerning defendant never stood on the floor of any court, himself a student of forty years training, had made a particular request that Mr. Gibbs should be retained, for he foresaw what difficult questions of evidence and constitutional law were likely to arise, anticipated in some degree the length and latitude of the trial, and wished to temper the discursive eloquence and forensic acumen of Erskine with the patient industry, careful investigation, and pleader-like habits of Gibbs. The event proved the felicity of his choice.

There are no trials in our legal history which excited such intense interest, as well from the novel doctrine of treason sought to be established, as from the fearful magnitude of the decision, on which the lives and liberties of hundreds hung suspended. The prosecution of Hardy, a poor shoemaker, who loved the title of Citizen Hardy and the dignity of secretaryship to the Corresponding Society, for the crime of high treason, was the first tried. The charge of constructive treason against the prisoner, divested of its legal phraseology, was this,—that under pretence of a parliamentary reform, and holding that out to the world as a mere colour and pretext, he had meditated a national convention, which should usurp the powers of the government, and overturn the constitution of the country. To bring home this charge to the prisoner, it became necessary to investigate the sayings and doings of the society from its first institution, and in all its ramifications, to scrutinize even its seditious songs, and thus spread a chaos of matter before the stunned ears and bewildered gaze of the jury. The proof of treason, which ought to lie in the palm of the hand, occupied five long days—a novelty unprecedented in the annals of our jurisprudence—harassing the mind and exhausting the frame. The

opening speech of the Attorney-General, Sir John Scott, alone consumed nine hours. He was supported by a whole squadron of lawyers, — the Solicitor General (Mitford), Serjeant Adair, Bearcroft, Law, Bower, Garrow, Wood, and the Hon. Spencer Perceval. In all the attributes of oratory, in the witchery of voice, eye, and action, Erskine was more than an equal match for the united forces of the Crown. He spoke with sublime energy of "that most fearful season when the light and humanity of even an English public could not be reckoned on with certainty, *when the face of the world was drawn into convulsions*," and declared with impassioned vehemence, "that he would rather, at the end of all these causes, die upon his knees thanking God that, for the protection of innocence and the safety of his country, he had been made the instrument of denying and reprobating the doctrine sought to be established, than live out all his days without exposing it." But among the jurors there sat probably several whose feelings and fancy were akin to those of the humble prisoner, — whose obtuse understandings, dazzled, but unconvinced, by the arts of the rhetorician, could only be subdued by a plain, honest, almost homely and common-sense, view of the merits of the case. To this task Mr. Gibbs strained his whole strength, and declining all rivalry in the tricks of elocution, for which he was utterly unequal, with his gifted leader, drove to the head his solid facts, and hammered down closely on their minds whatever straightforward, direct topics could be urged for the defence. He was overcome at first by a sense of the immense magnitude of the duty thrown upon him, and fainted away when he rose to address the jury, but recovered in a few minutes, and exclaimed, with a pathos which made itself the more felt from the previous exhibition of his sensitiveness, "Merciful God! how do we expect that thou wilt look upon us at the great day of judgment, if we thus scan the acts of our fellow creatures!" "Annual parliaments," he urged with great force, "and universal suffrage, are folly, I think, and I dare say you think so; but when such opinions are promulgated by noble dukes (of Richmond), that which is folly may reasonably be supposed to find its way into the mind of a shoemaker. * * *

The proof to convict an Englishman of high treason must be plain, must be direct, must be manifest. The proof in this case is plain, is direct, is manifest, but it is all in favour of the prisoner. The proof offered to support the prosecution furnishes a plain, direct, and manifest case for an acquittal. I have no scruple to say,—unconnected with all parties, not having in my mind a wish on this subject, except as a counsel may be supposed to entertain some in favour of his client; but with respect to the public, not entertaining a wish except for public peace and public order,—having never mixed myself in any political considerations whatever,—having never connected myself with any set of political men, and studiously avoiding such connexions — living equally with men who entertain one and the other opinion on the subject of politics,— I have no scruple to say, and I say it from the bottom of my heart, that I think a ruder shock cannot be given to the constitution of England, as far as it depends on a due administration of its laws, than by convicting this prisoner on this evidence." The jury, with some hesitation, concurred in the propriety of these remarks, and by their verdict of acquittal saved the lives of many misguided men from a danger, to which they should never have been exposed. Now that the excitement of those dark and evil days has passed away, moderate men of all parties have expressed their approbation of the verdict, and agree in opinion, that, however misguided or seditious the conventionists might have been, traitors they were not, according to the letter and spirit of the English law.

Horne Tooke's trial succeeded, and to this the waggery of the philosopher of Wimbledon lent a ludicrous air, reminding the spectator of one of Shakspeare's magnificent historical dramas, in which the gorgeous spectacle, passages of rare beauty, and incidents that stir the blood, are blended with punning dialogues, interludes, and farce; the block and axe of one scene being followed by the tricks of a merry-andrew in the next, till the audience begin to wonder whether they should laugh or weep. The reverend and learned defendant told anecdotes of a crazed correspondent of his, one Oliver Verrall, who proved himself to be the Deity by the signature of his name; "(I kept the letters out of curiosity, and it is

probable they may be produced against me); he proved it from the Old Testament; in the first place, that he was God the Father, because God is O. Veral; that is, God over all. He proved he was God the Son from the New Testament,— Verily, verily, I am he; that is, Veral I, Veral I, I am he." Mr. Tooke next reminded an adverse witness, Mr. Beaufoy, of his being unhappy, because Pitt would not return his bow; played off his joke at the expense of a member of parliament, by asking if he was a gentleman's servant, and even offered to lay a wager, but immediately apologized on the angry exclamation of the judge. But he raised no smile in the inflexible muscles of his junior counsel, who thus graphically personified his defence: "The charge against me is, that parliamentary reform was a mere pretext; that when I said, I meant a reform in parliament, I did not mean it — that I meant something else. They have raked up all the passages of my life; they have endeavoured to prove, by a hundred different acts, with many of which I am not affected, that my real object was not a parliamentary reform; they have not proved that which they undertook to prove, and which they must prove, before you can convict me — that I conspired with others to depose the king; they have put this case, that either I did that, or I meant parliamentary reform, and by putting it in that way they have given me the opportunity, which I am glad they have given me, of showing by evidence what I did mean. I will let you into the whole of my character; I will let you into the whole course of my life; I will call those who have seen me in public and in private. I will show you what I have done at public meetings, where there were many who could prove how I acted; I will show you what I have said and done before those who were in my confidence, and who, if I had any sinister designs, must have discovered them. I will lay my whole life before you, as far back as the memory of man can go; and in order to show that reform was my real object, and that it was not a mere pretext, I will show you that my writings, my acts, and conduct, do all manifestly testify that my opinion has constantly been, that the representation in the House of Commons should be reformed. I have had that, and that only object in view (and

Mr. Tooke is proved to you, by many witnesses, to be a man firm, steady, and inflexible in his opinions). I will prove to you as far back as memory can go, as far back as any of my acquaintance that are living can speak, that these have constantly been my opinions, and that I have uniformly acted upon them." Mr. Gibbs closed his speech with a confidence that was warranted by the event. "I have not entertained a moment's anxiety in this case, because I have found my client perfectly safe; he must be safe, because you are honest men!".

Mr. Tooke, on being acquitted, immediately rose and returned thanks for the noble support he had received. The value of Mr. Gibbs' services was feelingly acknowledged by Erskine, whose greatness precluded all mean jealousy of juniors, and who loved, with a native generosity of heart, to usher modest merit into notice. "I stood here," he remarked in his concluding speech, "not alone indeed, but firmly and ably supported by my honourable, excellent, and learned friend." The orator was interrupted for a time by the noise of some workmen, and resumed:—"I am too much used to public life to be at all disconcerted by any of these little accidents, and, indeed, I am rather glad that any interruption gives me the opportunity of repeating a sentiment so very dear to me. I stood up here, not alone, but ably and manfully supported by this excellent friend, who sits by me." From the triumphant procession which escorted Erskine home, the populace drawing his carriage, and seeking to tear his gown into shreds for relics, Gibbs quietly slipped away to the privacy of his chambers. But he returned to them a made man. Professional honours began to fall fast on the head of the successful lawyer; public bodies and commercial companies sought to retain him as their advocate, and the next few years became each an annual register of promotion.

On the death of young Burke, on the 5th of February 1794, Mr. Gibbs was gratified with the recordership of Bristol, an office of high dignity and importance, which he valued exceedingly, not so much on account of its "pomp and circumstance," its salary of one hundred guineas and two pipes of wine, and its large criminal jurisdiction, as from

the adventitious distinction of its having been filled by Dunning, and always deemed an appanage of distinguished men. It fell to his lot as Recorder to try an extraordinary prosecution, the Queen against Perry, who was indicted on an old statute, 3 Henry VII. for forcibly taking away an heiress, Clementina Clarke, from a boarding-school, she being under the age of sixteen, and for marrying her against her consent. The prosecuting counsel, Serjeant Bond, proved that she was an heiress by probate of the will, and established a case, very similar in its circumstances to that of Edward Gibbon Wakefield, that a letter brought word of her father's death, that a chaise came to the door with a man in livery, who delivered a note from a Mr. Gordon, who requested that Miss Clarke might be sent to his house, where some of her relations from Scotland had lately arrived. The prisoner and the lady were seen in the coach very cheerful and happy, galloping helter skelter to get married. The blacksmith-parson proved the marriage, that they appeared like other people, and he saw nothing amiss in them. Erskine, who came special for the defence, insisted on calling Mrs. Perry, as his witness, and said, "he would sit in court till the day of resurrection"* unless they allowed her evidence. The Recorder admitted her to be sworn, and she declared that she went voluntarily with Mr. Perry. There was a triumphant acquittal, and the people drew the lucky defendant and his bride in a carriage to their house at Clifton.

Mr. Gibbs received a silk gown in 1794, was gazetted as Attorney-General to the Prince of Wales in 1795, shortly afterwards kissed hands on being appointed Chief Justice of Chester, and in Hilary Term, 1805, received the honours of knighthood as Solicitor-General. With the spirit of a constitutional lawyer, he resigned his judicial appointment on being chosen one of the law officers of the Crown, and his example deserved, though it did not meet with, imitation. He retired from office in the following year, when the death of Pitt determined the existence of the ministry; and again, in the spring of 1807, succeeded Sir Arthur Piggott as

* Report of the Trial of Perry, 1798.

Attorney-General, receiving for a colleague his old school-fellow and friend, Sir Thomas Plomer. His Alma Mater put the seal on these patents of preferment by unseating Lord Henry Petty in his favour, and electing him one of her representatives. The numbers at the close of the poll proved how close the contest had been—a race the hardest run in university electioneering annals;—for Lord Euston, 324,—Sir Vicary Gibbs, 313,—Lord Palmerston, 311,—Lord Henry Petty, 269. He had sat in Parliament for two years previously for a close borough. "Never think of a seat," said Windham, "till you have pretensions to the rank of Solicitor-General." Gibbs acted unwittingly on this rule, for he had looked from youth up to his profession and that alone, had no taste for politics, and would have declined a seat altogether, had it been etiquette in lawyers of his station to have done so. For he obviously felt that his place was not in the legislature; that few lawyers could aspire to eminence in that arena, as well as in the courts at Westminster, and, except on legal topics, or questions connected with the duties of his office, seldom spoke, and probably never with much expectation of effect. That assembly of gentlemen, never very tolerant of lawyers, required, before they would listen with complacence, more saliency of mind, and greater felicities of manner and diction, than an unimaginative and adust lawyer could supply. He had incurred the imputation of rashness by measuring weapons with Fox; and we read accordingly of his complaining that he would not be interrupted by vociferations, however offensive, and of the learned member for Montgomeryshire (Mr. Wynn) proving most satisfactorily, from his multifarious knowledge of the journals, that every honourable member had a right to interrupt another, when advancing unsupported assertions. When the propriety of committing Sir Francis Burdett to prison was under discussion, Sir Vicary Gibbs argued that "a reprimand from the house would have no effect on one who had professed such an utter contempt for the authority of those who gave it. It would be like ordering him to receive a reprimand from his own servants, in his servants'-hall." Sir Fletcher Norton,

a still more obnoxious law officer of the Crown than Sir Vicary Gibbs, had long ago affronted the house by a similar exhibition of bad taste, declaring, that "he would pay no more attention to their resolutions than if they had been made by a parcel of drunken porters." Exclamations of disgust and cries of "order" were not more obstreperous on the first, than on the latter occasion. The comparison was greeted with loud murmurs of disapprobation, and the Attorney-General sat down greatly disconcerted. His nervous system winced at those symptoms of impatience which a less sensitive speaker would have despised, and shrunk from those intelligible signs of repugnance which have been described as too plain to be mistaken*—"the half-suppressed yawn, but so suppressed as to render it the more audible—the ominous banging of the green door, that gives you pretty strong hints that you are likely soon to have only the Speaker and Serjeant-at-Arms for your audience—the cough, ambushed in the member's gallery, emitted from lungs that seem to have economised a month's inflation for one explosion." The complaint made against his great patron Dunning was objected to Gibbs with still greater justice, that his speeches resembled more the pleadings of the bar than the oratory of the senate—that he never spoke from the treasury benches but in the gown and wig and band of the lawyer. So difficult is it for the most expanded intellect to throw off the habits of a profession, that Windham's rule should be honoured in the breach, by all who would unite the honours of a senator with forensic fame. "In the House of Commons Sir Vicary really had no place at all, and, feeling his nullity, there was no place to which he was with more visible reluctance dragged, by the power that office gives the government over its lawyers. He could only obtain a hearing upon legal questions, and those he handled not with such felicity or force, as repaid the attention of the listener. He seldom attempted more than to go through the references from one act of parliament to another, and though he was doing only a mechanical work, he gave out each sentence as if he had been consulted and gifted like an

* The Clubs of London.

oracle, and looked and spoke, as if, when citing a section, he was making a discovery." *

As a legislator, Sir Vicary's labours were comprised in one short but severe statute, which enabled the Attorney-General to hold defendants to bail, against whom he had filed an ex-officio information. To all the propositions of Sir Samuel Romilly for a reform in our sanguinary criminal code, he gave, both by his voice and vote, a stedfast opposition, urging that the possibility of inflicting death did operate as a prevention, but that he laboured under a disadvantage from not being able to produce instances, because what was prevented was never seen. He would not even admit the injurious effects of its being imperative on the judge, by the then existing law, to pronounce sentence of death, though he might not have the remotest intention of carrying the sentence into execution.

When the House of Commons resolved itself into committee to investigate the charges which were brought by Colonel Wardle, at the prompting of Mrs. Clarke, against the Duke of York, Sir Vicary Gibbs, from his official station, took a prominent part in sifting the evidence, and cross-examining the witnesses. However indignant at the base conspiracy, by which it was sought to ruin a generous and high spirited, but imprudent, Prince, we cannot fail to be amused at the dexterity with which that fair impenitent constantly foiled by her voluble, and sometimes witty, assurance the saturnine and surly lawyer. The following are a few not unamusing instances:—

"*Q.* By whom did you send the request?—*A.* By my own pen. *Q.* How did you send the letter?—*A.* By the Ambassador of Morocco. * * *Q.* What do you mean by this Ambassador of Morocco?—*A.* The ladies' shoemaker. * * *Q.* Who brought the message from the duke to you?—*A.* A very particular friend of the duke's. *Q.* Who?—*A.* One Taylor, a shoemaker in Bond Street. *Q.* What is your husband?—*A.* He is nothing but a man! *Q.* Have you had any negotiation or money transactions respecting promotion in the church?—*A.* I never received

* Lord Brougham.

any, but a Dr. O'Mearn applied to me. He wanted to be a bishop. *Q.* Did you communicate his proposal to the commander-in-chief? — *A.* No! he said that he had preached before his Majesty, and that his Majesty did not like the O in his name."

And again: — "*Q.* Do you often see Captain Dodd? — *A.* What is meant by often? *Q.* More times than once? — *A.* Yes, more times than once, if that is often." But the laugh at the expense of the learned gentleman was not raised at his expense alone. One of the ablest debaters in the house, Mr. Croker, was so overcome by the nonchalance of the ready-witted dame, as to inquire, "Did you sign any name to this anonymous letter?"—whilst another Irish member, to enhance still more the reputation of his country for blunders, rose to inform the house of the startling indecorum, "that a certain witness had been ordered to withdraw from the bar intoxicated on the motion of an honourable member." The buffoonneries of their own members were enjoyed equally with the pertness of the witness, and their contagious merriment could scarcely keep pace with her assurance. When the renowned Jack Fuller (that facetious member for Sussex who compared the Speaker to an owl in an ivy bush) asked a witness whether this lady lived next door to the tabernacle or not, and Mr. Wharton put it to the committee whether such a question should be asked, the cries of "no, no" prevailed, mixed with a roar of laughter. Mrs. Clarke was told by the chairman that the committee, in consideration of her fatigue, had ordered a chair for her; she retorted, "The chair will not take the fatigue off my mind," and was rewarded with a laugh. Upon being pressed by Mr. Croker with the question, "Is that the whole number of times that you have seen —— since his arrival in England," the ready witted dame retorted, "I believe that the honourable gentleman can tell very well, for his garret window is very convenient for his prying disposition, as it overlooks my house." But the whole affair formed a saturnalia for our legislators, who were delighted with seeing the grave Sir Vicary out-witted, and caricatured, and chronicled, the butt of ballads and lampoons. It must be confessed that the periodical press only took a natural revenge in refusing

quarter to their sworn enemy, when caught at disadvantage, for never, since the days of the Star-chamber and licenser, had there appeared an Attorney-General more able and willing to wage internecine war with the whole race of editors, sub-editors, copyists, and penny-a-line men. If poor Defoe, who wrote hymns to the pillory, and odes to Newgate, had been living in his day, he could not have found a patron more worthy of the soft dedication than this ruthless filer of ex-officio informations. There were in his time no less than fifty-two newspapers published in London, one half of which are said to have been at one and the same period under prosecution. He hung them all on the horns of a dilemma. If the editor apologized for the libel, his apology came too late, for the Attorney-General would not allow him "first to calumniate a man and then to nauseate him with flattery." If on the other hand the unhappy author made no apology, he confessedly deserved punishment as a hardened offender. Equally futile was the plea that the libellous paragraph had been copied from another paper. Sir Vicary Gibbs "must controvert the injurious idea that the copyist was not culpable. There was scarcely a case in which he did not consider the copyist more profligate and wicked than the original author." This reign of terror formed the subject of repeated motions in both houses of Parliament. In March 1811, Lord Folkstone brought forward a motion for an account of all prosecutions for libel by information ex-officio, since the 1st of January 1801, grounding the necessity for inquiry on the fact of their enormous increase. From 1801 to 1806 there were fourteen such prosecutions; in 1807 there was not one; in 1808 to 1810 there had been filed no less than forty-two; the yearly average of informations in the former period being two, in the latter fourteen. The complaint of undue severity was enforced in the House of Lords with apparent reason by Lord Holland, who moved certain resolutions, one to confine the filing of ex-officio informations within the lapse of a certain period after publication; a second, that it be compulsory on the Attorney-General to bring the matter to trial in a certain number of months, or to state to the court the reasons why he did not, and that after a verdict against a defendant judgment should be

prayed against him within a time limited. In addition to these resolutions, he stated, that he should have been prepared to move a censure on the Attorney-General, but for the estimable qualities which he understood him to possess in other respects.

The motion was rejected by a majority of twenty-four to twelve, the Chancellor, Lord Eldon, expressing surprise at the clemency of the individual complained against, by a similar idiosyncracy of understanding with that which led Lord Redesdale, on a subsequent occasion, to make his own despatch in deciding causes matter of astonishment. But, though silenced in the legislature, the voice of public opinion made itself heard in the remonstrances of the bar, and the indignant denunciations of the journals. The late Lord Abinger, then Mr. Scarlett, mentioned in Parliament that he had been present on one occasion in the King's Bench when twenty people were brought up for judgment, every one of whom was as little involved in any participation of the moral guilt of the offence of which they were convicted as any honourable member of that House. Among them were several women, who lived in different parts of the country, and whose only connexion with the offence was, that having annuities on newspapers, their names, as required by act of parliament, were lodged at the Stamp-office as joint proprietors of those papers. They all received sentence, not indeed a very severe one—they were fined 20*l.* a-piece; but still the prosecution of such persons argued an activity on the part of those who prosecuted them which excited strong sensations, and not of approbation, in Westminster Hall. The Times newspaper, which then, as now, "wielded at will the fierce democratie," and smote its oppressors with the editor's heavy flail, recorded the following energetic protest against the conduct of the undeterred but unpopular Attorney-General: —

"On Lord Folkstone's motion, not a creature stepped forward to assure the house that there was nothing of a rancorous or persecuting spirit in this law officer, which should induce the belief that he was capable of acting with peculiar barbarity. In a debate of six hours, the man at whose mercy the comfort and freedom of so many are placed,

found none ready to bear evidence to the general clemency of his disposition. At any future time, when a reformation of the law of libel may be attempted, it will not be necessary to say that ex-officio informations may be carried to a great extent, and in cases where no public danger is apparent—that they be hung in great numbers over the heads of subjects without being prosecuted to judgment—that unconvicted and untried men may thus be punished in their feelings and spirits and properties,—and that therefore, on such suppositious cases, a power which may be thus exerted in detriment of public liberty and professional independence ought to be circumscribed:—it will be sufficient, to prove the propriety of some change, to turn over the Parliamentary Reports, and to show from thence, that one Attorney-General has, on his own confession, in a time of profound internal tranquillity, filed informations against seventy persons in three years, whereas, in the thirty years preceding 1791, only seventy persons had been prosecuted altogether; that, on a general average, this same Attorney-General had filed in the proportion of seven to one more than his immediate predecessors, and (which is of more consequence than all the rest) had prosecuted to judgment, either of conviction or acquittal, not more than seventeen of the forty-two informations which he thus filed; thereby levying on every object of the other informations, be they many or few, a heavy extra-judicial penalty of anxiety, and care, and cost, according to his own discretion, and diffusing over the whole British press a system of apprehension that can scarcely be conceived."

A complete history of these prosecutions would occupy too large a space; it will suffice, that the reader may catch a glimpse of their general spirit, to give a sketch of one or two of the most characteristic. The trial of William Cobbett for libel, in June 1810, deserves especial mention. He had taken for the motto of his Register a passage in a newspaper: "The mutiny among the local militia, which broke out at Ely, was fortunately suppressed by the arrival of four squadrons of the German legion cavalry. Five of the ringleaders were tried by a court-martial, and sentenced to receive five hundred lashes. A stoppage for their knapsacks was

the ground of complaint which excited this mutinous spirit." We may explain, that these sons and servants of farmers had demurred to march without being paid a guinea. Lord Castlereagh had shortly before introduced a bill calling out the local militia, and Mr. Wardle had proposed to disband the German legion. On this short statement of facts Cobbett wrote the following highly spirited commentary: "See the motto, English reader! See the motto, and then do pray recollect all that has been said about the way in which Buonaparte raises his soldiers. Well done, Lord Castlereagh! This is just what it was thought your plan would produce! Well said, Mr. Huskisson! It was really not without reason you dwelt with so much earnestness on the great utility of foreign troops, which Mr. Wardle appeared to think of no utility at all. Poor gentleman, he little imagined how a great genius might find employment for such troops. He little imagined that they might be made the means of compelling Englishmen to submit to that sort of discipline which is so conducive to the producing in them a disposition to defend the country at the risk of their lives. Let Mr. Wardle look at my motto, and then say whether the German soldiers are of no use. Five hundred lashes each! Aye, that is right, flog them! flog them! flog them! They deserve it a great deal more. They deserve a flogging at every meal-time. Lash them daily, lash them daily! What, shall the rascals dare to mutiny, and that too when the German legion is so near at hand! Lash them, lash them, they deserve it. O yes, they merit a double-tailed cat! Base dogs! what, mutiny for the sake of the price of a knapsack! Lash them! flog them, flog them, base rascals! Mutiny for the price of a goat-skin, and then, upon the appearance of the German soldiers, they take a flogging as quietly as so many trunks of trees. I do not know what sort of a place Ely is, but I really should like to know how the inhabitants looked one another in the face while this scene was exhibiting in their town. I should like to have been able to see their faces, and to hear their observations to each other at the time."

"I here impute to the defendant," said Sir Vicary Gibbs at the trial, "that he charges the government with cruelty, — that he charges the military authorities with cruelty,

—that he suggests to mutineers the injustice of their sentence, and that he ridicules the patience with which they endured their punishment." The defendant avowed, in his manly address, a strong jealousy of the employment of German troops. "The graves of their fathers, and their property (if they have any) lie in Germany, and there are their affections also. My indignation was excited at their being employed, as I thought, indecently, in witnessing, if not assisting at, the flogging of Englishmen. In my hasty observations on this subject there may have been much bad taste, and many things which cannot bear the test of literary criticism; but I trust you will believe there was no bad meaning. My property, the profits of my publications, the very trees of my planting, all depend on the security of the country under the government of his Majesty and his successors; and I must be the greatest beast and fool, as well as knave and traitor, if I could seriously and deliberately intend the subversion of the government, or to do any injury to the country." The Attorney-General, in his reply, was peculiarly keen and cauterizing. "The defendant said he was brought up to London, and told, when he came there, 'I won't try you now; go back again and come up another time.' For this assertion there was no foundation, no more than for any invention which might spring from the wildest imagination of the wildest person. I am sorry to say that it is a dry cold invention, made only for the purpose of serving this trial. No man was ever so calumniated as he has been. I am not sure that he makes a very accurate distinction between the active and passive voice." The jury found him guilty. He was sentenced to pay a fine of 1,000*l.*, to be imprisoned in Newgate two years, and to find sureties, himself in 3,000*l.*, and two others in the sums of 1,000*l.* each. The earth has been freshly heaped on the body of this extraordinary and misguided man, the most idiomatic writer of English since the days of Swift, and a feeling of compassion may tinge with some degree of prejudice our view of the sentence. Notwithstanding his versatile politics and virulent libels, we cannot but entertain some sympathy with the strong John-Bullish spirit which provoked his punishment, and cherish a

lingering regret that two years of a life, which might have been spent with profit to society, should have been wasted away in the squalor and misery of a gaol.

Not content, however, with hunting down this more noble quarry, the Attorney-General seems to have joined with ardour in the chase of "such small deer" as debating societies and bill-stickers. The report of his prosecution of Gale Jones for a libel would excite a smile from the weakness of the defendant and his counsel, were not its character redeemed from the ridiculous by the eloquence of the presiding judge. This Jones was manager of a debating society, and had covered the walls of the metropolis with a silly placard, "British Forum, Bedford Street, Covent Garden. Monday, January 29th, 1810. Question, Whether Lord Castlereagh's order for the seizure of Mr. Finnerty, on the expedition to Walcheren, is to be considered the result of a wise and salutary caution for the discipline and order of his Majesty's forces, or a flagrant violation of the principles of a British subject, and a cowardly attack on the character of an innocent individual?" Another placard was published, proclaiming to the public that on the preceding Monday Lord Castlereagh was found guilty of a gross and malicious attack on the freedom of a British subject, in the detention of Mr. Finnerty. A Mr. Jones, apparently a pupil of this interesting academy, defended his namesake. He said that he rose with many a blush and conscious fear, but that his motive was his support. "For how could I see the victim who is now at my back without pitying him, without feeling my very heart's blood burning in the noble and sweet cause of dejected humanity? But I would have you to know I am no relation of his; my client is a Middlesex man,—I come from Carmarthen in South Wales, and so I can be no relation of his. I admire debating clubs, gentlemen, for constitutional knowledge. When I was at Kiel, in the north of Germany, studying law there, Professor Olivarius told me, it was not our free press, but our Parliament, and still more our debating societies, which made this country free. I entreat, gentlemen, you will acquit my client, if it be only to set my mind at ease."

This amusing picture of stolid naïveté was thrown into strong relief by the master-mind of Lord Ellenborough. "The professor, of whom the learned counsel spoke, must have taken a very narrow and idle measure of British freedom, when he conceives that any part of it was due to clubs of this order. I love free discussion. I would see no restraint and no limit to the free examination which men would make for the sake of truth. I may be inferior to my predecessors on the bench in many things, but in this I am not their inferior. I love inquiry into all that concerns the public interests or private happiness of man. While I have sat here no restraint has been laid on fair investigation, nor shall it ever while I sit here. It is the wish, the most entire wish, of my heart, to give perfect freedom of thought and word within the wise boundary of the laws. The press of the country is no longer subjected to a licenser; it is free; but if the writer will abuse its freedom to the injury of others, he loses the benefit of his privileges, and acts at his peril. Men will be malignant; and human life would be unsafe, and human happiness a name, if every man had the power of forcing his neighbour before the eye of the world, stripping him of the privacy which our laws still reverence, and throwing his fame and feelings at the mercy of the thousands who will rejoice to insult him, because they have the power to give him pain." The jury instantly convicted the poor wretch, who atoned for his impertinent vanity by an imprisonment of twelve months. There can be no question as to the impolicy of this and similar prosecutions. It was the vindictive power of government wasted on an insignificant, and therefore, innoxious object—a thunderbolt striking and buried in the clay!

In other cases, the excessive zeal of the Attorney-General, which sustained repeated defeats, betrayed him into the prosecution of such apparently innocent paragraphs, as that which follows:—"What a crowd of blessings rush upon one's mind that might be bestowed upon the country in the event of a total change of system! Of all monarchs, indeed, since the revolution, the successor of George the Third will have the finest opportunity of becoming nobly popular!" Mr. Perry, the respectable proprietor of the Morning Chro-

nicle, found himself unexpectedly called upon to defend his newspaper against a criminal information for a scandalous, malicious, and seditious libel. "As on the one hand," said Sir Vicary, "there should be a full and free discussion of every public measure, if conducted with decency and confined within proper bounds; so, on the other, it is necessary that decorum should not be entirely violated; that due regard to the relations between the sovereign and his people should be observed; and, above all things, it is essential that it should not be in the power of any man to tell the public that there are blessings which they might enjoy, but which are withheld from them by their sovereign, and to the possession of which they cannot look forward till the accession of the successor of him who now fills the throne. Nobody who sees such language held can doubt that such language must have a manifest tendency to alienate and destroy the affections of the people towards their sovereign, and to break down that link of love which ought to connect the king and his people in the tenderest ties." The judge and jury had no doubt, but not in the sense the counsel intended; they were satisfied of the innocence of the sentence. "What is this," said Mr. Perry, who ably defended his own cause, "but what happens every day in colloquial discourse, when it is a common flattery to say to a youth, in the presence of his parent, that you wish he may be a better man than his father?" Had such a prosecution succeeded, it would have been dangerous for the editor of a newspaper to have reported, in the list of toasts at a public dinner, one which was not unpopular at that period: "God save the King: The Prince of Wales *for ever!*"—It may be shrewdly suspected that there have been editors of the Morning Chronicle who would have considered the libellous paragraph too tame and spiritless for insertion. The allusion may have been borrowed from a smart saying of Wilkes, who, manifesting his attachment to the King in a very extravagant way, was asked by the Prince, "How long it was that he had been so loyal?" and replied, with keen irony, "Ever since I have had the honour of being acquainted with your royal highness!"

Another signal defeat was received by the persevering Attorney-General, in the following year, at the hands of Mr. Brougham, in the trial of the Hunts for a seditious libel, and though the tendency of the article in the Examiner might deserve far graver consideration, never was a vindication more eloquently poured forth, or more triumphantly complete. The libel itself, directed against flogging in the army, might be fairly commented on, as tending, by its indignant language, to exalt the French and degrade the English soldier. "The Attorney-General justly says, 'Buonaparte does not treat his refractory troops in this manner.' There is not a man in his ranks whose back is seamed with the lacerating cat-o'-nine-tails; his soldiers have never yet been brought up to view one of their comrades stripped naked, his limbs tied with ropes to a triangular machine,—his back torn to the bone by the merciless cutting whipcord, applied by persons who relieve each other at short intervals, that they may bring the full unexhausted strength of a man to the work of scourging. Buonaparte's soldiers have never yet with tingling ears listened to the piercing screams of a human creature so tortured,—they have never seen the blood oozing from the rent flesh,—they have never beheld a surgeon with dubious look pressing the agonizing victim's pulse, and calmly calculating, to an odd blow, how far suffering may be extended until in its extremity it encroach upon life. In short, Buonaparte's soldiers cannot form any notion of that most heart-rending of all exhibitions on this side hell, an English military flogging. We once heard of an army of slaves, which had bravely withstood the swords of their masters, being defeated and dispersed by the bare shaking of the instrument of flagellation in their faces. We entertain no anxiety about the character of our countrymen in Portugal, when we contemplate their meeting the bayonets of Massena's troops; but we must own that we should tremble for the result were the French general to dispatch against them a few hundred drummers, each brandishing a cat-o'-nine-tails."

Mr. Brougham, in his eloquent and manly speech for the defence, lit up throughout with that lambent fire which after-

wards burnt so brightly, guarded the jury against being betrayed into excess of prejudice by the abuse of the press, which had alienated so many of its friends, and enforced the necessity for discussing all plans of benefiting the soldier with freedom, citing, as examples, pamphlets that had been published by General Stewart and Sir R. Wilson. " 'The independence of an Englishman naturally recoils at the prospect of bondage, which gradually produces discontent against the bent even of inclination. How many men,' he adds, in still more glowing expressions,—but which I am far from blaming,—for I should have held him cheap indeed, if, instead of giving vent to his sentiments in this free and appropriate manner, he had offered them as coldly and dryly as if he were drawing out a regimental return,—' how many men are there who have now not the faintest wish to leave their own estates, even for a journey into another county, but who, if restrained by any edict from quitting England, would find this island too narrow to contain them,—would draw their breath convulsively, as if they craved free air, and feel all the mental anguish of a prisoner in a dungeon. What is the inference to be now fairly drawn from the perseverance in the system of enlisting for life? Is it not that the British service is so obnoxious and little conciliating, that if the permission to retire were accorded the ranks would be altogether abandoned, and the skeleton only remain, as an eternal and mournful monument of the wretchedness of a soldier's condition.'

" The publication then complained of had been composed with the same object, and in the same spirit. But the Attorney-General maintains that it tends to excite mutiny, and to deter persons from enlisting in the army. Now, gentlemen, I say that this fear is chimerical. I ask you to consider whether there is any visible limit to the argument which the Attorney-General has pressed on you, when he asserts that the tendency of this publication is to excite disaffection among the soldiers, and to prevent the recruiting of the army. I ask you whether any one of those points which are the most frequently discussed at all times, and by persons of every rank, can in any conceivable way be discussed, if we are liable to

be told, that in arguing, or in remarking upon them, our arguments have a tendency to excite sedition and revolt? What are the most ordinary of all political topics? Taxes, wars, expeditions.

"I say, if this argument is good for any thing, it is good for all; and if it proves that we have no right to discuss this subject, it proves that we have no right to discuss any other.

"But I dare say that one circumstance will have struck you upon hearing the eloquent address of my learned friend. I think you must have been struck with something which he would have kept out of sight. He forgot to tell you that no discontent had been perceived, that no revolt had taken place, that no fears of mutiny had arisen, that, in short, no man dreamt of any sort of dangers from the infliction of the punishment itself. The men, therefore, are to see their comrades tied up, and to behold the flesh stripped off from their bodies, aye, bared to the bone; they are to see the very ribs and bones from which the mangled flesh has been scourged away, without a sentiment of discontent, without one feeling of horror, without any emotion but that of tranquil satisfaction! And all this the by-standers are also to witness without the smallest risk of thinking twice, after such a scene, whether they shall enter into such a service. But have a care, how, at a distance from the scene, and long after its horrors have closed, you say one word upon the subject; see that you do not describe these things (we have not described them); take care how you comment upon them (we have not commented upon them); beware of alluding to what has been enacting (we have scarcely touched one individual scene); but above all take care how you say a word on the general question of the policy of the system; because, if you should attempt to express your opinions upon that subject, a single word of argument, one accidental remark, will rouse the whole army into open revolt! The very persons upon whom the flogging was inflicted, who were not to be excited to discontent at the torture and disgrace of their sufferings,—they will rebel at once, if you say a word upon the policy of such punishments. Take no precautions for concealing such

sights from those whom you would entice into the service; do not stop up their ears while the air rings with the lash; let them read the horrors of the spectacle in the faces of those who have endured it. Such things cannot move a man; but description, remark, commentary, argument, who can hear without instantaneous rebellion! The question which you are to try, as far as I am able to bring it before you, is also submitted to you; and that question is, whether, on the most important and most interesting subjects, an Englishman still has the privilege of expressing himself as his feelings and his opinions dictate?"

An English jury could scarcely fail to respond to this most powerful appeal, and, notwithstanding energetic replies from the Attorney-General, and from Lord Ellenborough, acquitted the supposed libellers.

"Hunt's publication," says the Times, "may be called a libel against the military laws. A libel against persons it neither is nor by any construction can be made to appear. Is not the first motion for the repeal of any act always attended with certain allegations against it that may be termed libellous, that it is unjust, tyrannical, impolitic, or absurd? It was held an ancient maxim of British jurisprudence that every man should be held innocent till he was proved guilty. The Attorney-General, not content with the just fame which he has earned by his humane administration of the existing laws against libel, brought in a bill, the effect of which was to abolish this principle, and to hold men to bail as guilty, who had never been tried, against whom he had merely been pleased to file his information. The Attorney-General has been beaten now; he may repose himself for a space from a task so disagreeable to his nature as prosecuting his fellow-subjects."

The effect of the public indignation, which Sir Vicary Gibbs by this and similar displays of tyranny excited, has been to deter his successors from a fair exercise of their duty. His immediate successor, Sir William Garrow, seemed to think that frequent prosecutions for libel did more harm than good, and in four years there was but one criminal information,—for a libel on a member of the royal family.

Sir Samuel Shepherd filed ten informations, and Sir Robert Gifford ten. Lord Lyndhurst may be said to have worn white gloves during his continuance in office, for he did not institute a single proceeding. Indeed, from 1822 to 1829, there was almost a total cessation of prosecutions for libel, not because they were not rife and aggravated, but because it was thought safer policy to let them alone. When Sir James Scarlett broke the long truce by fulminating his ex-officio powers against the Morning Journal newspaper, he surrendered, at the same time, his own personal popularity and domestic peace. There is no nicer problem in politics than to determine how far libels ought to be tolerated—when forbearance is salutary, regard being had to the temper of the times, and of juries, and the point at which it should end. Total forbearance on the part of government may produce greater evils than even reiterated acquittals. Public opinion appears to have established the principle that prosecutions for attacks on religion ought to be instituted seldom, and with extreme caution, and that obscene publications, however offensive to decency, should also be left to perish in their obscurity, or be consigned to the chastisement of the inferior tribunals; and that the power of an ex-officio information ought not to be pressed on ordinary or inadequate occasions. The sword of state must not be borne before the officers of justice at every trifling instance and request, but at solemn seasons, or, as an instrument of terror, it will be borne in vain. Still it must not be suffered to hang up and rust. The Attorney-General is bound to protect the honour of the Crown and peace of the country; by virtue of his office he should put down the publication of opinions dangerous to the existence of government, and shield public characters from malicious calumny. That law officer of the Crown betrays his duty, and deserts his trust, who concedes, through supineness, or moral cowardice, a positive impunity to libellers. Lord Eldon, in a letter to his brother, makes the just observation "If good men have the law unadministered on their side, and some bad men have the laws constantly violated on their side, there is no doubt, that, finally, the latter will destroy the former."

There is a further apology for the unpopular prosecutions of Sir Vicary Gibbs, which few take into account,—the pressure from within,—the influence of the cabinet. Lord Eldon, writing to his brother, Sir William Scott, in 1809, says, "As to the prosecution of the Morning Chronicle, and as to your friend Cobbett, I know what I should have done with those publications long ago, if I had been Attorney-General; but it seems to me, that, ever since my time, it has been thought right to leave the government's character and individual character without the protection of the law being enforced, because I had proved its efficacy, when it was called into exertion. I am very sore upon this subject. I have growled and grumbled about it till I am weary."

That Sir Vicary Gibbs acted, not merely from ministerial instructions, but in conformity to his own stern sense of justice will be admitted by all who are acquainted with his peculiarly sensitive character. His excitable temperament, irritated by the least puncture, must have endured a species of self-inflicted martyrdom, when stung by the hornets of the press. Unlike his compeers at the bar, most of whom had the reputation, perhaps not unjustly, of being stern, insensible men, he was nervously anxious about the good opinion of the world. A proof of this excessive sensibility was early shown at Hardy's trial, when Chief Justice Eyre complained of his sending for Mr. Erskine to interpose; and it required a repeated observation from that model of judicial courtesy, on his complaining that he was deeply mortified,—"I am extremely sorry for it, I never wished to mortify you," to sooth his ruffled spirit. When twitted in court with having subscribed to a new translation of Lucretius, an argumentative and inductive work in sonorous verse against the immortality of the soul and the providence of the Divine Being, the sensitive Attorney-General "would not let it go forth to the world that he was sanctioning such doctrines," when Lord Ellenborough, with more presence of mind, interposed, observing, that he need not give himself the trouble of explaining; for as well might it be said that every gentleman who subscribed to a new edition of the classics was the favourer of these doctrines. But an account

of a prosecution for libel, in 1808, which he led against that reckless lawyer Clifford, will best display the true character of the man,—his object in commencing a hopeless crusade against the press—the kindly spirit that was too constantly clouded by waywardness of temper—his ever-wakeful irritability, and his anxious desire to atone for an unpremeditated wrong.

The defendants, John Hart and Henry White, were indicted for a libel on Lord Ellenborough in their newspaper, the Independent Whig. "Lord Ellenborough seems to think very lightly of an Englishman being confined several hours in irons by the impudent mandate of a man hired to behave civilly to the person whom he insults and degrades. Lord Ellenborough feels nothing for the wounded sensibility of a female, the daughter of the injured party. I suppose his lordship is not a father." In his opening speech Sir Vicary alluded to his college friendship with the noble lord; and, alluding to the career of libel long pursued by the defendants in their newspaper, remarked, "It is only the licentiousness of the press I wish to restrain; and if I should find these persons returning within the pale of their duty, uttering only such doctrines as a man in my situation can suffer unrestrained, I can assure them they will never find me their enemy; but I can also assure them that my abstinence has not proceeded from any consideration which will prevent me, if they persevere in the conduct they have pursued, from applying the utmost strength of the law to stop their career. I hope it will not be necessary,—I wish it may not,—I have great expectation that it will not, knowing, as I do, the learning and good sense of the gentleman to whom they have entrusted their defence." A part of the libel which said,—"I suppose his lordship is not a father; I should almost question his ever having been a son, if there had been any other mode of coming into existence,"—created some laughter, which, according to Sir Vicary, degraded those who indulged in it below the standard of rational beings.

Mr. Clifford, in his speech for the defence, sneered at his mention of school-boy days, scoffed at his phrase "absti-

nence," and that defendants must behave themselves to his liking. "He is, forsooth, such an extremely merciful Attorney-General! He would have better consulted his duty, the dignity of his office, and his professional character, in altogether forbearing to introduce such topics.

"I really do not know whether Lord Ellenborough does or does not think lightly of an Englishman's being confined in irons; but this I know that it is evident the Attorney-General does think lightly of an Englishman's being put in irons, for in the course of his speech he says that this gentleman was put in irons all night, but he was subjected to no particular inconvenience! It is natural to ask, How we have got into such a state of degeneracy, disorder, and tumult, that now, for the first time in our history, we are libelling courts of justice? Gentlemen, I do not think we have shown that disposition more than our ancestors before us. It is an offence which is not peculiar to our own times. I should have expected that the Attorney-General would have shown you that there had hardly been a reign wherein the best men had not been libelled, and wherein it had been the misfortune of the Attorney-General to come before juries and ask for verdicts against the libellers. Now, I do not assert it, but I believe it to be a fact, that the Attorney-General cannot give me an instance since the revolution, though the conduct of judges and juries has been arraigned upon all sides, yet I believe he will not be able to produce an instance of a prosecution for a libel upon a judge.

"It is odd that it should appear that in the history of prosecutions of this country we never should have had a prosecution for libels upon judges, except in those instances where the conduct of those very judges was vulnerable, and where they were afterwards punished for that conduct by parliamentary impeachment.

"I do think it would have been acting a more magnanimous part—I do think it would have been placing the Lord Chief Justice in a more dignified point of view—if the Attorney-General had said, 'Here have been persons prosecuted for libels upon judges, but they have never been prosecuted except by the vilest persons; and I will not put Lord Ellenborough into

such an invidious situation as prosecuting this publication will place him; I will not put him into a situation in which any person may be led to suspect him; and as all judges who have gone before, however they might have felt hurt, have only laughed at these things, therefore Lord Ellenborough shall not stand as a single and solitary instance of a judge who has acted the other way.' The language which Shakspeare makes Cardinal Wolsey use in his defence seems to me to be extremely applicable to the subject; he says,

> 'If I am
> Traduced by ignorant tongues, which neither know
> My faculties nor person, yet will be
> The chronicles of my doing, let me say,
> 'Tis but the fate of place, and the rough brake
> That virtue must go through.'"

At the conclusion of Mr. Clifford's speech there were loud plaudits in the hall, and Sir Vicary Gibbs rose to reply in excessive wrath. "As the learned gentleman who has just addressed you has left the court, I will abstain from what I was about to say. I am willing to give him credit for the learning and talents which he has exhibited in this most ingenious, but at the same time most extraordinary, defence; yet, although I have been witness to many addresses in this court equally eloquent and able, displaying as much learning and ingenuity, and, I must say, much more correct judgment than has been shown by the learned gentleman, I never have before witnessed an act of such indecency and impropriety as has been exhibited in the body of the court this day at the conclusion of the learned gentleman's speech. I must suppose it can only have proceeded from some extraordinary means used to procure such an expression of popular feeling.

"With respect to what has been stated by my learned friend—I correct myself, I should say, by the learned gentleman—the fallacy of the argument the learned gentleman has used could not have escaped the vigilance of even an attorney's clerk. I will tell you, gentlemen, why I recal the expression of 'my learned friend.' There is no courtesy I would not show, no expression of kindness I would not use, upon any occasion towards any gentleman of the profession. But after the manner in which he has addressed you as to my conduct

in this case, it would have been mean and abject in me to have given him that appellation. He said, 'the Attorney-General thinks lightly of an Englishman being confined in irons, for he has told you that that gentleman, by being kept in irons all night, has suffered no inconvenience.' It is a grave imputation against me; it deeply affects my moral character; it invades my claim to that which I must be most anxious to possess, namely, the good opinion of good and moral men. I must deserve to be an outcast of society if such a sentiment could be justly attributed to me." He explained that the man had been subjected to no incidental inconvenience beyond the circumstance of his having been confined in irons, and called on the learned gentleman for an explanation, which Mr. Clifford reluctantly made. "So then my learned friend—for I will now call him my learned friend—adopts my meaning. I can feel for the situation in which my honourable friend is placed... I have heretofore been placed in the same situation myself. I know the difficulty of finding plausible topics on which to address a jury; and when we cannot find wise ones, we must sometimes have recourse to foolish ones. To be sure, the inference he has drawn with respect to my notions on such a subject is as weak a one as ever was urged. He said that there had been four prosecutions against persons who had libelled Chief Justice Scroggs; and that it had happened, by a singular fortunate circumstance, that all the judges, who had arraigned the conduct of those who had charged them with corruption, had afterwards been detected in and convicted of improper practices. But he intended no personal imputation! My learned friend has a precedent for his argument in the conduct of the libellers themselves. They say, too, that they mean no harm; they say, 'God forbid that Lord Ellenborough should ever conduct himself as Judge Jeffries did;' they say that, although they consider that they have brought their arguments to bear with respect to the cases they are discussing, yet that they mean nothing disrespectful to the Lord Chief Justice. I know not what they may mean, but I well know what they have said of him. And this reminds me of a saying of the late Lord Chatham. When a certain gentleman had uttered some

improper expressions in parliament, that noble lord threatened to have them taken down; they were taken down, and the gentleman who had uttered them was called to account for having used them. He begged for mercy of the house, and said he meant nothing by the expressions he had uttered. Lord Chatham said, he hoped the house would not press severely upon the gentleman who had so submitted himself; but he would give that gentleman a piece of advice, by which he hoped he would regulate his conduct in future; namely, when he meant nothing, to say nothing. I hope that my learned friend, when he has four cases which mean nothing, will in future omit stating them in a speech of four hours!"

Having thus figured as Sir Fretful, the learned Attorney-General continued, with cruel mercy, but real kindness of intention, to correct what he presumed to be a mistaken impression. "I cannot but have observed, from a smile on your countenances, that you conceive I meant to impute to my learned friend that he was the author of these letters. I meant no such thing. I should think it was very unworthy of me to say any thing that might seem to justify such an imputation, after having made the observation I have made on an unintentional misrepresentation of myself. I should be sorry to leave an impression on your minds that these papers had proceeded from the pen of my learned friend. I believe he would deem such publications unworthy of him; I believe he would not, like an assassin, attack people in the dark. I believe, if ever he did publish a strong paper, he would put his name to it. I should hold him to be the basest coward, and most unworthy the rank he holds in society, if he could bring himself to the dastardly practice of feeding the columns of a newspaper with libels against Lord Ellenborough, filling the situation in which you so often see him acting for the public benefit. I thought it necessary to do my learned friend this justice." His learned friend might have retorted upon him the words of Shakspeare, "Marry, sir, you are over-gracious."

The jury interposed to prevent Mr. Justice Grose recapitulating the evidence, the publication being too manifestly libellous to admit of doubt. The defendants, having been convicted of other libels on Lord Ellenborough, were sen-

tenced to three years imprisonment, one in the gaol of Gloucester, and the other in the gaol at Dorchester, and were ordered to find sureties for good behaviour, upon the expiration of their imprisonment, for five years. Against this judgment the defendants sued out a writ of error, on the ground that the gaols mentioned were not the immediate prisons of the Court of King's Bench, and that the security required was illegal and excessive. The Attorney-General treated the arguments of his indomitable antagonist, Mr. Clifford, at the bar of the House of Lords, with much superciliousness. "That imprisonment is a species of punishment for libellers, and that to require security for their good behaviour after their imprisonment is a very usual practice, must be so well known to the learned gentleman, that I shall not condescend to show either a principle or a case for the purpose of supporting that doctrine. In much of what has fallen from the learned gentleman I shall not follow him, because a great part of his statements carry with them their own refutation." The Solicitor-General, Sir Thomas Plomer, did on the contrary condescend to cite authorities, asserting, "that in the times of seven chief justices and twenty-two judges he had not less than twenty-one cases in point to offer to the notice of their lordships." The judgment was of course affirmed.

Sir Richard Phillips, the bookseller, and once sheriff, relates an anecdote of Gibbs, the self-complacent tone of which will be detected by the reader, but which evinces much goodness of heart in the stern Attorney-General, marred indeed and blurred over by ill humour. "Sir Richard Phillips (he writes of himself in the third person, à la Cæsar) was a witness in a cause * in which Sir Vicary asserted, in his coarse way, that if any publisher bought a book without consulting the reviews in regard to former works of the same author, he was the greatest fool in Christendom. 'First, we have Sir Richard Phillips, who has given us evidence of his being one of the greatest fools that ever lived under the sun, or that he is not to be credited on his oath. I say, it appears from his own testimony, either that he has given us false evidence, or that he is the greatest fool that ever walked upon the face of

* Carr against Hood.

the earth without a guide.' Lord Ellenborough, interposing blandly, 'Weakest, perhaps, weakest.' Attorney-General: 'The weakest man that ever walked upon the face of the earth without a keeper.' In the character of an advocate to apply such attributives," writes the wounded dignitary, "belongs perhaps only to Sir Vicary Gibbs; in the character of a judge to take them up for the purpose of rendering them more bitter under the guise of sweetening them, belongs surely only to Lord Ellenborough." A few days after, both advocate and sheriff were in the drawing-room at St. James's. "Sir Vicary Gibbs, at a great distance, across a crowd of heads, recognized the sheriff by a continuance of cordial salutations, which were at first gravely received and not returned; but in a few minutes he bustled through the throng and held out his hand. The sheriff smiled, and remarked that, after all which had passed in the papers, it was strange to see them in that attitude. 'Pshaw, sir, do you think I regard newspapers?' 'Yet,' rejoined Sir Richard, 'you have as great an interest in them as a publisher in reviews.' 'You are right, you are right, sir, but you must not expect a pleader to be always logical. The man must be distinguished from the advocate. I hope we are friends, and shall continue so." Unusual, and probably ungraceful as this reconciliation and interchange of civilities must have appeared in the presence-chamber, Sir Vicary evinced the spirit of a gentleman, in his desire to conciliate the magnificent high sheriff, whom he believed that he had justly offended. There was an undergrowth of kindly feelings, but a restless, anxious temper disturbed the surface.

"Society," says the author of 'My Contemporaries,' "did not hold a more disagreeable man. Sneer and ill-nature appeared to have taken settled possession of his countenance, to form the leading traits of his character, and he exercised both with untired perseverance. His laugh was an hysteric affection, unmarked by cheerfulness or good humour; and although my intercourse with him in the profession was frequent, and in business time I was in the daily habit of seeing him, I do not recollect ever to have observed a ray of pleasantry pass across his countenance. He stooped occasionally to be what he thought gracious, but he wished to

have it considered as condescension. This made his civility disgusting, as it was accompanied with an air of assuming superiority; it seemed to be a reluctant homage which he paid to the settled rules of decent civility, not the offering of good nature, good feeling, or good manners. This majesty of bearing was displayed upon all occasions, but chiefly at his consultations. After stating his own view of the case, he went through the ceremony of asking the opinions of the other counsel in the case who attended him. He received their answers with a simper of affected acquiescence; but it was evident that he paid no attention to their suggestions or opinions, and had made up his mind to act wholly upon his own. The exercise of this prerogative of absolute judgment was not confined to those who were his juniors and without rank; silk gowns and coifs came in for an equal share of it. In one instance only do I recollect to have observed him relax his unbending superiority; it was at a consultation at which Mr. (now Sir Edward) Sugden attended him as one of the counsel in the cause. It would be unjust to deny that on that occasion he violated his second nature, and treated Mr. Sugden with civility, and his opinion with respect. It was on a question of real property, in which he condescended to think that Mr. Sugden might be as well informed as himself."

"The general narrowness of Sir Vicary Gibbs' mind," says Lord Brougham, "has been remarked, but, on the side of vanity and self conceit, it was out of proportion to its dimensions in other parts. It always seemed as if no one could do any thing to please him, except one individual, and his performances were rated at the most exorbitant value. Nay, the opinion of that favoured personage he estimated so highly that there always lay an appeal to him from the bench, as well as from every other authority, and it was sometimes truly laughable to observe the weight which he attached to a single sentence or a word from one with whom he was ever so entirely satisfied. On a certain trial he had occasion to mention some recent victories of Lord Wellington's army in the Peninsula, and had named three battles with praise not very lavish, because every word was

deemed of inestimable value, but had omitted Busaco; he corrected himself very ostentatiously, and went back to include that fight with the feeling, manifest to all who heard him, that real and irreparable, possibly fatal, injury would be done to the troops, had the momentary omission unhappily not been supplied."

One of the leaders of the Nisi Prius bar against Gibbs was Topping, an austere and haughty man, but his pride was never displayed in his intercourse with the members of his own profession. Entitled, however, to some station and rank in society, he ill brooked the upstart assumption and irritating peevishness of his rival. He tolerated it long, though his pride was evidently suffering from his forbearance. He seemed unwillingly, from a respect to his profession, to keep down his resentment and curb the public expression of his feelings; but an occasion occurred which overcame his resolution, and rendered him unable longer to control them. His indignation was roused at a trial at Guildhall, in which he and Sir Vicary Gibbs were counsel on opposite sides. He observed on the assuming tone and manner adopted by Sir Vicary in the most pointed and indignant language, and concluded with the emphatic delivery of the lines from the speech of Cassius in Julius Cæsar:—

> "He doth bestride the narrow world
> Like a Colossus, and we petty men
> Walk under his huge legs
> To find ourselves dishonourable graves."

This was accompanied by an angry look of ineffable contempt; and the figure and manner of Topping, contrasted with the meanness of Sir Vicary's appearance, gave force to the reproof, and all the bar present joined in the opinion of the justness of it. His assumption of superiority was like applying to himself the fable of the thorn claiming precedence over the trees of the forest, and the bramble said to the cedar, Come and rest under my shadow! Topping's swelling indignation might have found vent in the language of the Faery Queen:—

> "But I, tho' meanest man of many moe,
> Yet much disdaining unto him to lout
> Or creep between his legs!"

Though rebuking his arrogance of demeanour, an admirable judge has admitted the excellence of Gibbs as an advocate, both at Banc and at Nisi Prius. "To eloquence he made only moderate pretences, yet was his language, which gurgled out rather than flowed, often happy, always clear and transparent, owning a source sufficiently pure if somewhat shallow. His legal arguments were often much to be admired. He brought out his governing principle roundly and broadly; he put forward his leading ideas by which the rest were to be marshalled and ruled; he used his master key at once. He was also a very considerable person at Nisi Prius. His correct and easy knowledge of all legal matters was here by no means his only superiority; he was ready in dealing with evidence; he could present to the jury the facts of his case boldly and in high relief, though he was wholly unable to declaim, and never dreamt of addressing the feelings or the passions any more than if he were speaking to mummies. Without any sensation, much less any feelings or passions to address, yet he could, especially when clothed with the dignity of high official station, deliver himself with considerable emphasis, though without any fluency, and could effect the purpose of impressing the facts upon the jury's mind by the same strong and even choice phrases, sparingly used, though coming out with little flow of words, and no roundness of period, which we have remarked among the characteristics of his arguments to the court upon the law."*

Unpopular in his own branch of the profession, the Attorney-General could not boast of being a greater favourite with solicitors, especially the worse part of them. For though the temper of the man might be bad, and his manner hard, ungracious, and repulsive, his was not the abject spirit to truckle to those who had power in their hands, or to speak in honied speech to an efficient patron. If the action was founded in folly, in knavery, or in both, he never failed to acquaint its aiders and abettors with his opinion. His forensic bitterness always assumed its harshest tones when denouncing, as he termed them, the prowling jackals, the predatory pilot-fish, of the law. One of this class chanced to

* Lord Brougham's Statesmen.

be standing near him as he was addressing the jury, when, suddenly turning round, he rivetted the attention of the whole court on his victim:—"Does any of you want a dirty job to be done? There stands Mr. (naming the individual), ready and willing to do it." The presiding judge interposed, but Sir Vicary persisted. "I will not be silenced. The fellow deserves to be exposed, and I will expose him." On another occasion, an attorney having brought a very thick brief to his lodgings in the assize town very late at night, was about to make his bow, when Sir Vicary Gibbs grasped the huge mass of paper, and inquired, "Is all this evidence?" "No, sir," replied the attorney, "there are forty pages containing my observations." "Point them out." He then tore these pages from the rest, thrust them into the fire, and concluded the interview with the sarcastic remark, "There go your observations."

Mr. Espinasse, who appears to have imbibed a bitter prejudice against Gibbs—the prejudice is not to be wondered at in an Irishman fond of fun and merriment—speaks far more disparagingly than they deserved of his abilities as an advocate, and impugns his own judgment: "Subtlety in an address to a jury is wholly misapplied, and nicety of distinction is a mere waste of words. The speeches addressed by him to juries were neither calculated to persuade, to convince, or to produce effect. They were laboured displays of studied ingenuity, too refined for the apprehensions of those to whom they were addressed. To be convinced, we must not only hear but understand. He divided, distinguished, and defined, until his speeches became logical enthymemes, through which the juries were incapable of following him. His voice was shrill, sharp, and unmusical, and he never tried the experiment of aiming at persuasion by softening its tones: he punished the ears of those whom he addressed in a tone of objurgatory expression, resembling that of an angry scold, when, as was generally the case, he could neither command their attentions, nor convince their understandings. No joke or sally of wit was ever known to escape him; and to any thing bordering upon pleasantry he was not only an utter stranger, but his countenance prohibited every attempt at it by others." The

above criticism we have proved to be greatly exaggerated; the attornies, who generally consult with much shrewdness the interests of their clients, held a different opinion. In the very zenith of Erskine's fame, Gibbs shared with Law and Garrow the honours of rivalry, and on the retirement of these great opponents became the acknowledged leader at Nisi Prius.

There were fierce struggles, we are told, between Gibbs and Garrow. He was often indeed, in ordinary cases, an overmatch for Erskine himself; but Erskine could afford to sustain this defeat or this over-reaching, and his temper was sweet as his nature was noble. Not such the temper of Sir Vicary. When Garrow would run round him,—get verdicts from him,—beat down his damages by coarse clamour or hoarse laughing,—even make points against him, or filch them, as he was wont to phrase it, the bystander saw such bitterness manifested in the defeated face, that he could not have wondered at seeing him cry from mere vexation.* Scarlett, alone, held the undisputed lead in the common law courts for about twenty years; and held it to the last without the least diminution of favour among his clients. The practice of Nisi Prius requires youthful vigour as well as other less fleeting qualities. Even Lord Erskine, in less than that period of time, showed plain symptoms, not, certainly, of decaying faculties, but of declining practice. For the last five or six years of his brilliant career his business fell off. There is a fashion in this walk of the profession which passeth away; Garrow outstripped Erskine and Gibbs. He could not, it is true, be compared with them, or even with Best or Dallas, as a finished rhetorician and "damage-broker" in those actions which came nearest home to the business and bosoms of men—actions for malicious injuries and cruel wrongs, actions to try the validity of a will, for breach of promise of marriage, for criminal conversation, or seduction. His education as a pleader made him look with too technical an eye on the legal requisites for maintaining an action, and his sympathy

* Law Review.

with the father's sorrows for the bereavement of his child was blended with an anxious solicitude to prove an actual loss of service—that the unhappy young woman had actually done some domestic duty—had made tea, for instance, in her father's house. The language of love was as strange to him as the contents of a novel—he had never read, and knew not, the strange characters in which its history is written. Hence his confident assertion, the truth of which might be questioned in a female circle, "that it was preposterous to imagine a girl of seventeen knew any thing—could know any thing—of love." On those occasions which crowded the King's Bench and Guildhall to the doors—which awakened the sympathies of the chance audience, who came as to a theatre of amusement, and extorted tears from my Lord Kenyon, Mr. Gibbs was rarely employed, and rarely successful. But every frequenter of a court of justice knows that the vast majority of causes are those which in their nature do not interest the feelings—cases of contract, which give opportunity for clear, logical statement—for legal subtleties and forensic ingenuity, and in which sometimes the most skilful tactician carries the day.

Of that useful qualification for a Nisi Prius leader, a fund of humour, he was wholly destitute. He had the honest Johnsonian dislike of a pun; had never in his keeping a first or subsequent edition of Joe Miller, and could as soon have led off at an assize-ball with the daughters of the grand jury, as have moved the muscles of the petty jury by quips and cranks and wreathed smiles. The grave Attorney-General capered in sad fashion when he tried to be jocular, as the following instance will show. "A clergyman, who was refused a licence to a lectureship by his diocesan, because he had preached against infant baptism, applied to the King's Bench for a mandamus, and filed affidavits, that such was the effect of his sermon upon others, that they immediately had children baptized in whose case the ceremony had been omitted. This denial reminded him, the Attorney-General, of a nurse, who, in cutting some bread and butter for a child, happened to let the bread fall, and exclaimed in a pet, 'rot the loaf;' the child reported the

exclamation to her mother, when the nurse not only denied that she had used these words, but declared herself to have said 'bless the bread!'"

The following instance of satirical pleasantry, in his argument on the Banbury Peerage case, is somewhat more successful:—"Instances have been adduced of these extraordinary births, but none have been cited, in which a man of 82, having begotten a son, had concealed the birth of such son. Would not he seek publication rather than concealment? Besides, at the birth of children in families of distinction, it is generally an object of much anxiety to have the event authenticated. Some registry is made of it. None has been found here after the most diligent search. If the register is lost, the date may always be supplied by the banquets and festivities with which it is contemporaneous. Why, the whole county would have resounded with the ringing of bells; you would have had processions of old men on the anniversary of such a prodigy! It would have excited as much surprise, as if a mule had been brought to bed. It reminds me of the lines of Juvenal:—

'Egregium sanctumque! virum si cerno, bimembri
Hoc monstrum puero, vel mirandis sub aratro
Piscibus inventis, et fœtæ comparo mulæ.'"—SAT. xiii. 65.

Though denied the faculty of facetiousness, Gibbs could wield with the fatal skill of a literary Teucer, the poisoned arrows of sarcasm and contempt. He led an action against the underwriters for total loss with benefit of salvage; a large rat hole, it appeared in evidence, had been discovered under the starboard bow. Upon this Erskine told a story of a bill of chancery filed to discover the cause of a ship's unseaworthiness. The equity draftsman who drew it had propounded these questions: "And that the said defendant may answer and set forth what number of rats were in the said ship, and whether they might not have eat holes in her timbers, and, if not, why not? and whether all, or any, or which of the said rats had tails, or, if not, why not? It was thus his friend, Mr. Cooper, had exercised his wit in ridiculing the desultory pleadings of courts of equity. But

the rat in question was so malicious an animal, that it waited till the moment the ship got to sea, and then said to itself, Now I have you, now I'll do for you, and so gnawed away the bottom." Mr. Gibbs had covered his face with his hands as if in disgust at so much silliness in a heavy insurance case, and observed, in reply, in his most freezing tones: — "Out of regard to my learned friend, I pass over in silence those inane puerilities, which are too absurd for even ridicule to smile at!" The jurors could scarcely dare to laugh after this.

A favourable specimen of the facility and virulence with which Gibbs could give what Judge Jefferies used to call "a lick with the rough side of his tongue," is presented in the trial of Dubost v. Beresford. The plaintiff's case was shortly this. He came to ask damages for a violent demolition of property. He was a French artist, and had formed an exhibition in Pall Mall, and showed, among other paintings, one from the old Arabian tale of Beauty and the Beast. The Rev. Mr. Beresford, described as a reverend Vandal, and son of the Archbishop of Tuam, cut the picture in pieces. The plaintiff valued it at a thousand guineas. "The functions of the defendant," said Mr. Jekyll, "should have taught him other conduct: *Tantæne animis cœlestibus iræ!*"

The Attorney-General, for the defence, rushed at once *in medias res*. "This is the most impudent appeal ever made to a British jury. This foreigner claims the protection of the laws; he should not have begun by insulting them. Dubost found in Mr. Hope a most liberal patron; he gave eight hundred guineas for this painting, which constituted all this *ruffian* was worth in the world. (The plaintiff, who was in court, made some movement as if in contradiction.) I perfectly know what I am saying, and I cannot suppress my indignation at the insolence of this *fellow*, this true original for his own *beast*, who dares to continue in court during this trial. What was this fellow's conduct? He lived at Mr. Hope's for a length of time, and he employed his time in taking opportunities of future insult to his benefactor. He made large demands on Mr. Hope's liberality, and there is no man

more liberal. It was found necessary to get rid of this importunate *beggar*, and then the *reptile* took his revenge; then it prepared to sting its benefactor, and a most amiable and admirable lady, in the tenderest point. He had the insolence and ingratitude to caricature them. (Mr. Hope was caricatured as a beast, with an eye-glass round his neck, having his paw on a chest of jewels. In the beast's mouth there was a scroll with these words, 'I am sensible I am a horrible beast; but if you will accept my hand, all these riches shall be yours.' Mrs. Hope was wringing her hands.) This was offensive in the extreme, and nothing could be more untrue than the insinuation. Mrs. Hope's brother, indignant at the injury which his sister's feelings must sustain, indignant at the scandal which was hourly thrown on his own family, put an end at once to the picture. What was the injury sustained by Dubost to that which he had meditated against an honourable man and his family? What was the object of this action? The plaintiff knew that nothing could be more galling to the feelings of Mr. and Mrs. Hope, than to be brought a second time before the public, to have themselves talked about, and their whole domestic life canvassed. He brought this action only to extort something more from the delicacy and wounded sensibility of Mr. Hope and his wife. But the jury would disappoint him. It was even by Mr. Hope's permission that the plaintiff was at that time sitting in the court. Mr. Hope might have brought his action, and if his (the Attorney-General's) advice had been taken, the reptile would be prosecuted for his libel. 'An action would have extinguished the picture: but, if a man holds a sword to my throat, am I not to beat it down? Was Mr. Beresford to see the slow finger of scorn pointing at his sister without taking any steps to abate the nuisance? He could not afford to wait for the tardy proceedings of the law." Lord Ellenborough pronounced the picture to be a libel, 'the exhibition of which would have been stopped in five minutes by application to the Chancellor.' He was mistaken in this opinion. "It was more than probable that an injunction would have been issued to prevent the picture's being ever exposed to sale. The plaintiff therefore lost all

right to consider himself aggrieved by diminution of profits from his exhibition, or even by the destruction of his picture. They were means of unlawful profit, and therefore no compensation could be provided by the law. The picture in its perfect state could only be looked on as an instrument for the production of punishment, and the jury would resolve their damages into those of the mere wax, canvass, and colours. The jury awarded the plaintiff 5*l.*"

An instance of taking the law into one's own hands, still more successful, is recorded in Ireland's Hogarth. In the Miser's Feast, Mr. Hogarth thought proper to pillory Sir Isaac Shard, one of the sheriffs of London, a gentleman proverbially avaricious. Hearing this, the son of Sir Isaac, the late Isaac Tacitus Shard, Esq., F.R.S., a young man of spirit, just returned from his travels, called at the painter's to see his pictures, and among the rest asked the cicerone, "whether that odd figure was intended for any peculiar person?" On his replying that it was thought to be very like one Sir Isaac Shard, he immediately drew his sword and slashed the canvass. Hogarth instantly appeared in great wrath, to whom Mr. Shard calmly justified what he had done, saying that this was a very unwarrantable licence; that he was the injured party's son, and that he was ready to defend any suit at law; which however was never instituted. The caricaturist justly merited the damage that was done to his painted libel, and appears to have deserved, more frequently than he met with, punishment for his personal abuse. A worthy man at Windsor, whose name was Dalton, having chanced to incur his resentment, he introduced into a print of the Harlot's Progress a wig-box over her bed, with the inscription "John Dalton, his wig-box."* The licence of vituperative abuse wanted no augmentation, even in the eighteenth century.

Sir Vicary Gibbs excelled in a reply, that trying test of ability in an advocate. When praying judgment in full court on prisoners convicted of some heavy misdemeanor, and rebutting the arguments urged in mitigation of sentence, he was accustomed to display no less virulence than acumen.

* Memoirs of Dr. Wharton.

With an extract from one of these bitter harangues we shall enrich our specimens of his oratorical merits. When Colonel Draper was brought to the floor of the King's Bench to receive judgment for a libel on Mr. Sullivan, after Mr. Dauncey and others of counsel for the prisoner had argued ably in mitigation of punishment, the Attorney-General thus retorted their arguments: "My lords, Colonel Draper is certainly much indebted to my learned friend Mr. Dauncey for that consideration which he has desired the court to have of the defendant's feelings. No man seems to be more alive to any insinuation against his own character than Colonel Draper. No man is more impatient or restless under the charge that it should ever have occurred to his honourable mind to publish of Mr. Sullivan, not what was not true, but what the colonel did not believe to be true. He feels that the finest feelings of a soldier, a man of honour, and a gentleman, are outraged. He feels that life is not worth supporting, whilst such an imputation remains upon him. I wish, my lords, that he had had the same consideration for Mr. Sullivan which he desires your lordships to have for himself. I wish, notwithstanding the care which my learned friend gives him the credit of having taken, that nothing should be published lightly against Mr. Sullivan, that he had had a little more of that care. I wish that he had proceeded somewhat less hastily. I wish that, possessing, as he states to your lordships, those fine feelings himself, he had supposed it possible that there might be other men of honour, other men of feeling, other men who would feel that their lives were rendered miserable by being told that they were dark and cowardly assassins, — by being told that they had uncloaked the stiletto, and plunged it into the breast of an officer. I wish that Colonel Draper, feeling so acutely the slightest imputation on his own character, feeling that he ought never to be removed from that pinnacle on which he had placed himself, had considered how deeply a man must suffer under the grievous imputation which he by this libel has cast on Mr. Sullivan." Colonel Draper was sentenced to be imprisoned three months, and to pay a fine of 100*l.*

In a trial in which the notorious Colonel Wardle was

defendant, Sir Vicary Gibbs exerted all his envenomed strength, and stung, in his reply, the obnoxious accuser of the Duke of York to madness. His cross-examination of the unlucky officer was said to exceed in rancour and ability even Garrow's practised power; but it was a labour of love with the Attorney-General to crush a man who had caused him, in the House of Commons, such infinite annoyance.

"Strange, to see Mr. Wardle impeaching the evidence of Mrs. Clarke. When she was his witness she was all sincerity, simplicity, and truth; but as soon as she gave evidence which touched the pocket of Mr. Wardle, then she was every thing that was foul and abominable. When by the assistance of Mrs. Clarke he had contrived to ruin the character of another, it would be too hard that he should be allowed to redeem his own by impeaching her testimony. Colonel Wardle was asked by the bench what possible reason Mrs. Clarke could have for coming forward into a situation of such delicacy, and even danger—she, a selfish woman, bred up in prodigal habits, and of an abandoned course of life? What was his answer? A most magnificent answer, but nothing more; nothing that could carry conviction, or the shadow of conviction, to men of sense. Who could believe it of a woman in her situation? She was, he supposed, influenced by her love of country. This was really too incredible! One witness had employed himself in taking down in writing every sentiment which the Duke of York had uttered to Mrs. Clarke concerning the royal family. What! was this honourable or just, to take advantage of (for, notwithstanding the presence he was in, he would say it) the blameable indiscretion of the royal duke? Even if he employed himself thus to worm out the secrets of a private and contracted circle he should have been culpable; but to attempt to undermine,— to fatten, as it were, on the offal of that illustrious family, which every subject in the land should reverence and love and support, it was almost incredible, although indubitable."

We return from considering the professional character, merits, and estimation of Sir Vicary Gibbs, to proceed with his personal history. After filling the office of Attorney-General for five years, he felt himself scorched by the duties

of his trust, or rather by his mode of performing those duties, and began to pant for retirement. His health, never vigorous, had been shaken, not only by his rigid discharge of his official labours, but the hourly calls on his time in the course of a very extensive practice. His high spirit was goaded to the quick by the incessant attacks which an irritated and vindictive press launched against him, for they had received, and gave, no mercy. He had now attained that age at which, by an act of American legislature, a lawyer is held to be superannuated—too old and infirm for the office of a judge. He was sixty-one, and though impaired in vigour, well enough, and sufficiently able in body and mind, to do his country good service, and rather early than late according to many of our past precedents for promotion to the bench.

It has been surmised that the period of his retreat to the bench was accelerated by that unhappy incident, the murder of Perceval by Bellingham. The precipitate hastening of his trial, which took place in one short week from the death of his victim, a respite having been prayed in vain to enable the prisoner's friends to procure witnesses from Russia who could speak to facts of decided insanity, has cast a stigma upon all engaged in the prosecution, especially upon the Attorney-General who conducted it. To bring a case of life and death before the jury, when flushed with horror, and not recovered from the shock of natural indignation, precluded a calm investigation, and shut out all chance of that good deliverance which the law in its humanity prays for the prisoner. Equal exception may be taken to the generality of Sir Vicary Gibbs's arguments against the plea of irresponsibility.

"A man may be deranged in his mind; his intellect may be insufficient to conduct the common affairs of life, such as disposing of his property, or judging of the claims which his respective relations have upon him; yet such a man is not discharged from his responsibility for criminal acts. I say this upon the authority of the first sages in this country, and upon the authority of the established law at all times, which law has never been questioned, that, although a man be incapable of conducting his own affairs, he may still be

answerable in his criminal acts, if he possesses a mind capable of distinguishing right from wrong."

The lunatic may be able to distinguish good from evil in the common relations of life, and yet destroy a fellow-being, under the influence of some wild delusion, with as little remorse as if he were dashing to pieces a potter's vessel. But though dissenting from the accuracy of the Attorney-General's premises and conclusion, we do not mean to impugn the justice of the verdict, or question the propriety of Bellingham's execution. He was not more fanatical than Felton—not more irrational than Earl Ferrers—not less responsible than M'Naughten. The event of the trial might be perfectly right, but the time for holding it was too short; the occasion of it so sudden as to make that offering appear a victim to prejudice, which ought to have been a sacrifice to the law.

Expressions of joy at the death of Perceval were heard about the house, accompanied with regret that others, and particularly the Attorney-General, had not shared the same fate. Three weeks after, on 29th May 1812, Sir Vicary Gibbs was sworn in a judge of the Common Pleas in the place of Sir Soulden Lawrence resigned. Whether alarm or weariness, or an union of both feelings, determined his choice, he did honour to the bench, and for six years, by an admirable discharge of his judicial functions, evinced the advantage of our national usage over the law on the other side of the Atlantic. It was made matter of observation at the time, that Sir Vicary Gibbs, after serving the Crown as its legal officer with such energy and zeal for so long a period, should have consented to such an implied loss of rank as a puisné judgeship, and to a certain diminution of income. The situation of Attorney-General at that epoch realized an average income of 10,000*l.*, whilst the dignity of a puisné judge was most inadequately sustained by an allowance of 2,500*l.* a year. Sir Vicary Gibbs, however, did not sink quietly down on the side cushions of the bench without a promise of advancement in rank whenever a vacancy should arise. Modern theoretical reformers of our constitution have proposed to withdraw from the government this power of

promoting judges, on the ground that it would render them more independent of the Crown. The expediency of such a change would be, to say the least, very doubtful. Judicial subservience is not a subject of imminent danger in an age when popular applause and public notoriety have usurped such paramount sway; and it would, as in the present instance, —the cases of Lords Kenyon and Tenterden might be also mentioned—exclude from the chief seat the very men who might be best qualified to preside in it with honour.

In Trinity Term 1813, Sir Vicary was made Chief Baron of the Exchequer, and after presiding one term, the fourth part of a year, over that vacant court, and realizing in his own person the truth of the witticism, that barons of the Exchequer were like partridges in November, no sooner down than up again, he resigned that easy seat, and was finally removed to the place he had long coveted, the chief justiceship of the Common Pleas, in the room of Sir James Mansfield. None of his enemies, and he had many, could deny that he was entitled by desert to these successive promotions. Even had barristers the power of electing the judges, according to the whimsical notion of some modern ultra-reformers, we have such reliance on their judgment as to believe that his election would have been secure. The "Note Book of a Retired Barrister" admits that none were more highly qualified, but detracts from his eulogy by anecdotes, the accuracy of which, in delineating the judicial demeanour of Sir Vicary Gibbs, may be questioned. "Until the appointment of chief justice took place" (we cite his words) "the members of the King's Bench bar knew little of him as a judge; but there was but one opinion as to his fitness for the situation which he had been selected to fill, and that, in point of learning and experience, no one could be found better qualified for it. It was the resumption of all the practice of his former life, and afforded a field for the full exercise of his legal knowledge. His decisions on the bench or at Nisi Prius furnished equal proofs of the extent of his reading and of the accuracy of his mind. His appointment to the Common Pleas, however, was not hailed with much satisfaction by the serjeants who then composed the court. To

the manners of Sir Vicary Gibbs they were no strangers, and anticipated that whatever learning he might contribute to the court, he would add nothing to its comforts. Report spoke of him as carrying an unaltered temper and unchanged manner into his higher situation, and conferring their blessings on his newly adopted brothers. Endless peevishness of observation, and petulance which knew no fatigue, formed the ordinary accompaniments of his administration of justice. Whatever professional rank the coif procured, it afforded no protection against the virulence of the chief justice's remarks; and the situation of a serjeant was far from being an enviable one. Every member of the profession who had occasion to come before him, felt and complained of the offensive peevishness of his temper; and I recollect an observation of one who was then a king's serjeant, and has since filled a judicial situation, 'I wish Sir Vicary would knock me down at once, and not keep continually pinching me.'" A friend of the late Serjeant Runnington, who had never before been in the Court of Common Pleas, having one day accompanied him into it, and hearing the judges and serjeants addressing each other by the affectionate title of "brother," observed that it was the first example he had found of Shakspeare's line,—

"We few—we happy few—we band of brothers."

"We give that a different version here," said Runnington; "it is 'We, few happy, band of brothers.'" "Whom do you mean, serjeant, by the few happy?" "They who have no business," replied the serjeant, "for they do not come into contact with Gibbs."

In justice to the memory of an excellent judge, we are bound to state that this dramatic description is greatly overcharged. The writer draws his sketch from a recollection of the manners of the advocate, and not from his experience of the judge; for in the Court of Common Pleas in term time he was not allowed to practise, and he attaches more importance than they deserve to the passing jests of the day as portraitures of character. The traditional voice of the profession ascribes to Sir Vicary Gibbs the merit of having subdued his manner, and smoothed down

asperities of temper, when clothed with the responsibility of presiding judge, a merit of which he should not be defrauded, for he accomplished this arduous task under the irritations of declining health and a debilitated frame. "When he came among the heads of the law," says a severe professional critic, "whether in his own court, or at occasional meetings of the twelve, even while junior puisné judge, he arrogated the place and deference due to the chief of the whole, and when he was made Chief Baron, and afterwards Chief Justice, there were no bounds to his contempt for all the opinions of all his brethren, although, it is an undeniable fact, that he was not nearly so much distinguished for the soundness of his opinions upon the bench, as he had been for the excellence of his arguments at the bar. In trials at Nisi Prius, he was distinguished for the little peevish temper which predominated in him, often to the seeming injury of his judgment, almost always to the detriment of his judicial powers; and so absolutely was he persuaded of his own universal capacity and the universal unfitness of others, that it was no uncommon thing for him to ask, somewhat roughly, for a counsel's brief, that he might see what was intended to be stated, then lecture the attorney who had prepared it, soon after the witnesses, and down to the officer of the court, whose functions of keeping silence and order he would, occasionally, himself undertake to perform."

It was only on occasions of fraud or breach of decorum that his moral sense flashed forth its indignant disapproval. He then rolled with equal spirit, but less power, the "non imitabile fulmen" of Lord Ellenborough, and the thunders of the Court of King's Bench were reverberated with a shrill and mimic echo from the Court of Common Pleas. In this tone and temper he refused to try an action, Ditchburn v. Goldsmith, between certain inhabitants of Gravesend, on a wager that Johanna Southcote would be delivered of a male child on or before a certain day mentioned. "So! I am to try the extent of a woman's chastity and delicacy in an action on a wager. This is a grave court of justice. Call the next cause!" In another case, Holme, Clerk, v. Smith, D. D., the curate had brought his action against

the rector for non-residence under the 53 Geo. III. c. 49, which provides, that if the rector do not reside on his rectory, he shall keep a licensed curate to perform the duties of the church. The facts in proof were, that the plaintiff himself had actually done the duties as curate, and had been nominated as such to the bishop, but informally. Before summing up, the Chief Justice addressed the plaintiff, who was seated at the table beside his counsel, in his most acrid manner, and desired him to stand up:—"I am compelled by law to sum up the evidence to the jury in your favour. The statute is imperative, and the jury are bound by law to find their verdict for you; but, sir, you will quit this court disgraced as a man and a gentleman. Your action is one that becomes a pettifogger, but is most unbecoming a clergyman and a Christian."

Taunton's Reports will bear a lasting record of the depth, accuracy, and extent of the legal knowledge of Sir Vicary Gibbs. One case, Deane v. Clayton, Bart., with regard to which the court differed in opinion, not only shows his discrimination, his ruling having been since confirmed, but the comity and personal deference of his manner to his brothers on the bench. The custom which prevailed when Sir Orlando Bridgman was appointed Chief Justice of the Common Pleas, of the eldest serjeant putting a case, and the newly made chief giving an answer to it extempore, had long since grown obsolete. There is no chief within our memory who could less have feared the revival of the custom than Gibbs, for to none were the names of cases, and the very pages of the reports in which those cases appeared, more familiarly known. He would sometimes, in giving judgment, suggest a case in point which had wholly escaped the notice of counsel, and often interposed in the course of their arguments with pertinent questions, not put unseasonably, or in a manner that would distract the attention, but with an appositeness that tended to save time by bringing the discussion to a point. This practice has been generally adopted by modern judges. They would confer a boon on the profession were they to comply with a suggestion that Sir Vicary Gibbs repeatedly threw out,

that each court should recognise one set, and only one set, of reporters. The evil was great in his day, but had not yet risen to the magnitude of three or four reporters in one court!

As a criminal judge he administered justice in mercy. When Attorney-General, he had adhered conscientiously to his motto "leges juraque;" but his adherence may be thought to have trenched on the ultima lex and the summum jus—the law in its entirety—the rigour of the law. In punishing offenders, no objections have been urged against his moderation and clemency; he soon perceived the difference between praying for and pronouncing judgment, and seems to have assumed a placable spirit with the red robes. He continued during four years and a half to preside over the Court of Common Pleas. "Subeunt morbi tristisque senectus." Old age, like an armed man, was upon him. His friends and coadjutors were retreating or dropping off one after another in rapid succession from the judgment seat. Heath had died suddenly in the act of writing a dinner note to him,* and Lord Ellenborough had informed him that he should be compelled to resign. Sir Vicary determined not "to lag superfluous on the stage," when his friend had quitted it. On the 4th of November 1818, Mr. Justice Abbott was sworn in Chief Justice of the King's Bench in the room of Lord Ellenborough, and on the following day Sir Vicary Gibbs resigned his seat to Sir Robert Dallas. They had struggled through the long vacation in the hope that the breathing-time which it afforded would bring with it renewed strength for the labours of Michaelmas Term;—but term came, and the hope proved delusive. Both survived their withdrawal from office a very short period: the first died in a month—Sir Vicary lived on, but his life was one long disease for upwards of a year. He retired to his pretty villa at Hayes in Kent, and there loved to babble, not of green fields,

* This severe but gastronomic judge decided in favour of the legality of a wager of a rump and dozen on some unimportant dispute: "A rump and dozen means a good dinner for twelve, with plenty of good wine, and there is nothing illegal in that, that I know of!"

but of suits of law, that law to which he had devoted his health and strength, and which had his love strong in death. His mind remained perfect amid the gradual extinction of his physical powers. The weary pulse of life at last stood still. He died 8th February 1820, aged 69, and was buried in the family vault at Hayes.

It is stated in a short notice of him, published after his decease, that his death was hastened by grief. "Circumstances connected with his private life, we read, had cruelly thwarted his better nature; and, already subjected to much physical fatigue, he had scarcely ascended the bench when a deplorable event which occurred in a distant land to one near in blood, as dear to his affections, confirmed a shock upon his system which his weakened powers might not resist, and he died, it is believed, of a broken heart."* Without invading the sanctity of private life, we have no hesitation to express our total disbelief in this imaginary notion. We do not agree with Abernethy that the only person who ever died of a broken heart was a ticket porter; the wounds of the spirit, though they have no nomenclature in physic, slay many; but the death of a lawyer at sixty-nine is surely not so premature as to be ascribed, with any show of reason, to an affliction, however severe, which occurred several years before.

By his marriage with Lady Gibbs, a sister of Lieutenant General Myer, to whom he was married in matured life, who survived him, and for whom he had great affection—there are few characters more thoroughly domestic than your hard-working lawyers—he left an only daughter, married to Mr. Pilkinton. His personalty was sworn to be under 80,000*l.* Of this sum he bequeathed 30,000*l.* to his daughter on the death of Lady Gibbs, leaving to her nearly the whole of his remaining personalty and real estate. In person Sir Vicary was below the middle stature, not more than five feet three or four inches in height, of a meagre and attenuated frame. As Miss Seward says of Dr. Darwin, "beauty and symmetry had not been propitious to his exterior." He looked plain in his wig, and ugly out of it. It was remarked

* New Monthly Magazine, Vol. 28.

of him, with more truth than politeness, that his face had such strong points and angles, it might have been hewn out with a hatchet. His complexion was the colour of the parchment he had studied. A keen eye, hooked nose, thin lips, and pinched nostrils, lent an expression of peculiar acrimony to his countenance. The "naso suspendis adunco" of Horace represented exactly the character of that prominent feature. No one could glance at him without at once perceiving that he was sarcastic and austere. His address did not redeem the outward appearance of the man, being both constrained, distant, and assuming. It has been erroneously asserted, that he had never read but two books out of the profession since he quitted Cambridge.* "In the one he was fortunate enough, it was Shakspeare. Not so felicitous did he turn out to be in his second choice; it was Damberger's Travels, which he had painfully studied, and even indexed. But unluckily it turned out to be a very clumsy fabrication, no such journey into central Spain having ever been undertaken, nor any such traveller having existed. It was generally understood that he studied none but law books. We remember Sir Vicary Gibbs being very much edified, when calling on Sir James Mansfield, and finding him in bed, to see that he was reading Coke Littleton." * This notion was, in its extent, however, a popular fallacy. With the taste of a ripe scholar, the Chief Justice retained to the last his relish for the classics, and enjoyed the perusal and re-perusal of the old English dramatists. Of his apt quotation Mr. Amos gives an excellent illustration: "I remember being present when the portrait of Sir Edward Coke (which is in the collection of pictures of celebrated members of Trinity College, kept in the master's lodge) was shown to another chief justice, Sir Vicary Gibbs. Upon his attention being drawn to it, and the parity of his rank and station with that of the oracle of law being alluded to, he exclaimed,

'So were I equall'd with him in renown.'" †

On his character, after the illustrative anecdotes and comments we have given, it would be superfluous to enter into

* Law Review. † Amos' Letters to Dr. Whewell.

further observations in detail. One caution is indeed necessary to guard the reader against a too unfavourable impression. He was a man of worth, but unamiable — a high churchman in religion, and in his politics a decided tory. His eloquent advocacy of the acquitted felons in 1794 had made the name of Gibbs for a season, though he never appeared amongst them, a favourite with their party, and when he became an official supporter of government, their displeasure evaporated in the harmless joke of proposing the *memory* of the *late* Mr. Gibbs. His bias to toryism became more determined as he advanced in years, but he had no opinions to recant — no mean adoption of convenient politics to justify — no apostacy to explain. His biographer must admit ill-temper, and assign indifferent health as an excuse, the force of which will be admitted by those alone who have themselves struggled with disease. They know how futile is the ironical bidding of the poet:

> "Go bid physicians preach our veins to temper,
> And with an argument new set a pulse."

To the zealous patronage of Gibbs, Gifford and Dampier were chiefly indebted for promotion. His anxiety, indeed, in aiding the professional advancement of young friends exposed him, with too much reason, both in his official character of attorney-general and in the capacity of judge, to the imputation of favouritism. The bar of the Western Circuit had cause to complain of the spirit of partizanship with which he sought to push the fortunes of an especial favourite. It is a fault which all men in authority and leaders of circuits ought carefully to shun, both on personal and professional grounds; for it tends to exclude that fair and equal chance of success which is the best characteristic of the law as a profession, and necessarily exposes those against whom it is charged to much censorious remark. But it is a fault to which men of cold and reserved habits, who attach to themselves few intimacies, and who feel, in consequence, more than due gratitude for the show of friendship in the patronized, are peculiarly prone to commit. This was the head and front of Sir Vicary Gibbs' offending. A high sense of honour — the innate feelings of a gentleman —

a compliance, the most rigid, with the decalogue — the domestic virtues — all these he had, but he wanted the grace, which is to the character what the frieze is to the column. His best friends must wish that he had studied more the amenities that adorn, and the charities that soften, life. He was beloved in the family circle — faithful to his friends — devout, magnanimous, and just; but he failed in manner, and his ungracious deportment cast a shadow over the worth enshrined within. His great leader Erskine was almost worshipped in his generation, for, apart from his gift of eloquence, he had a ready smile, a prompt and warm shaking of the hand, a pun, a jest, a repartee for all his friends; the idol of the robing-room, the demi-god of the circuit table. Such is the importance of a facile address — a happy manner — a courteous bearing — in our intercourse with the world. In real, intrinsic goodness of heart, Sir Vicary Gibbs need not have shunned the comparison. Peace to his manes! Though he failed to conciliate the good will of his cotemporaries, we may venture to predict that his name will be held in honour by posterity, for the merits of the lawyer have survived the humours of the man.

CHAPTER VIII.

THE LIFE OF LORD ELLENBOROUGH.

In an old work, intituled "The Dignity of the Law," it was shown that at that time nearly one-sixth of the peerage might be traced to the bar. A more recent lover of heraldry, in his zeal for the grandeur of the profession,* has ascertained, by an accurate investigation of the red and blue books, that three dukes, five marquises, thirty-one earls, one viscount, and forty barons derive their honours from this fertile source. The premier duke of England, Henry Charles Howard Duke of Norfolk, deduces his origin from Sir William Howard, a common law judge in the reign of Edward the First and Edward the Second. The Duke of Devonshire from Sir John de Cavendish, chief justice of the King's Bench, in the time of Edward the Third. In like manner the Duke of Manchester derives his title from Sir Edward Montague, chief justice of the King's Bench in the time of Henry the Eighth. There are none in this splendid list who have been ennobled by a prouder or more unimpeachable title than Edward Lord Ellenborough. Among that proud array of distinguished lawyers who have presided over the Court of King's Bench from Holt, who disregarded rank, to the present Chief Justice, on whom the barony was worthily bestowed, there are none who have worn the ermine with more unsullied purity, or borne the sword of justice with a firmer hand.

Edward Law was the fourth son of Dr. Edmund Law, Bishop of Carlisle, and was born at Great Salkeld in Cumberland, on the 16th of November 1750. His forefathers had been settled for several centuries in the adjoining county of Westmoreland as *statesmen*, to use the sounding phrase of that district, or proprietors of small farms. Bishop Law, the

* Mr. Foss in his "Grandeur of the Law."

son of a pious clergyman, held, along with many valuable preferments, several strange doctrines on abstruse points of theology, and, though a very amiable man, was suspected of being a latitudinarian divine. Those who remember the judge, and attach any weight to the notion of inherited habits and dispositions, will be surprised to read Paley's description of the liberal prelate. "He was a man," says the shrewd archdeacon, "of great softness of manners, and of the mildest and most tranquil disposition. His voice was never raised above its ordinary pitch. His countenance seemed never to have been ruffled: it invariably preserved the same kind and composed aspect, truly indicating the calmness and benignity of his temper. His person was low but well-formed; his complexion fair but delicate. His fault was too great a degree of inaction and facility in his public station. The bashfulness of his nature, with an extreme unwillingness to give pain, rendered him sometimes less firm and efficient in the administration of authority than was requisite."

But, however excellently tempered, his knowledge of the ways of the world was supposed to be so slight, that Warburton and Hurd, the wise men of their generation, sneered at his primitive simplicity in their letters to each other. "Law and his friend should have gone to the classical hell to consult Tiresias in the art of thriving. God help them! for they are a couple of helpless creatures in the ways of this world! and nothing to bear their charges but a little honesty, which, like Don Quixote's chivalry, will pass current in never an inn between Carlisle and London.

"Whether in metaphysics at a loss,
Or wandering in a wilderness of moss,

not half so fit for a mastership as Sancho Pança was for his government."*

This helpless wanderer, as he is here caricatured, proved to be one of the most fortunate dignitaries of the church of England, became successively prebend and dean and bishop, and educated his family with such felicitous ability as to have the rare luck of rearing two bishops, and one chief justice, at

* Letters between Hurd and Warburton.

his own fireside. To his credit be it spoken, he made no sacrifice of principle, but was happy enough to have Dr. Cornwallis, afterwards Archbishop of Canterbury, for a pupil, and the Duke of Grafton for a friend. He defended to the last the doctrine of what is usually called the sleep of the soul, which he had mooted in his exercise for the divinity degree; viz., that the human soul forfeited its immortality by the fall, but regained it in consequence of the merits of our Saviour, that it cannot exist without the body, and must, therefore, in the interval between death and the resurrection remain in a state of non-existence; he wrote, in addition, several valuable works of theology, the "Serious Call" being the best and most popular; edited the writings of Locke, of which he was a passionate admirer; and died in 1787, after holding the see of Carlisle nineteen years, in the fulness of his days and honours. His wife Mary was a daughter of John Christian, of Unerigg in Cumberland, Esq., and married to him in 1740. She is represented to have been a most amiable woman; as a clerical punster phrased it, a Christian in disposition no less than in name. She died in 1762, leaving a family, which exceeded in number even the clerical average of eleven children. Young Law was twelve years old at the time, sufficiently old to have profited by her care, and to cherish her memory. He had been chiefly educated, up to this period, by his maternal uncle, the Rev. Humphrey Christian, at his residence at Docking in Norfolk; a change of residence which did not suffice to remove the Northumbrian burr—the rattling rr's, which, to the last, distinguished the northern scholar as a native of the debateable land. At twelve years of age he was placed, through his father's influence, on the foundation at the Charter House, and rose to the head of the school, continuing there nearly six years, and laying a broad and massy basis of classical learning. There he formed many friendships, and he left there many regrets. Capel Lofft, a contemporary, describes him to have been at once moody and good-natured, a bluff, burly boy, ever ready to inflict a blow, or perform an exercise for his schoolfellows.*

* Quarterly Review, vol. 60.

In 1768, having just attained eighteen, he was matriculated at Peterhouse, the small and ancient college of which his father had been fourteen years the master. Kindred pursuits and studies led to an intimate acquaintance at Cambridge with Soulden Lawrence, Le Blanc, and Gibbs, who were subsequently his companions on the bench. Another friend, William Coxe, (afterwards Archdeacon,) was admitted into this clever cycle, and has sketched a portrait of the manners of the youthful lawyer, some touches of which will be recognized as a likeness by the friends of the original in the height of his distinction. It is interesting to compare the youth with the man of mature age, and mark what a visible identity remains,—how little change is wrought by time or circumstances in the prevailing excellencies or defects of character. "Philotes (by this name he designates Mr. Law) bears the first rank in this our society. Of a warm and generous disposition, he breathes all the animation of youth and the spirit of freedom. His thoughts and conceptions are uncommonly great and striking; his language and expressions are strong and nervous, and partake of the colour of his sentiments. As all his views are honest, and his intentions direct, he scorns to disguise his feelings, or palliate his sentiments. This disposition has been productive of uneasiness to himself and to his friends, for his open and unsuspecting temper leads him to use a warmth of expression which sometimes assumes the appearance of *fierté*. This has frequently disgusted his acquaintance, but his friends know the goodness of his heart, and pardon a foible that arises from the candour and openness of his temper. Indeed, he never fails, when the heat of conversation is over and his mind becomes cool and dispassionate, to acknowledge the error of his nature, and, like a Roman catholic, claim an absolution for past as well as future transgressions. Active and enterprising, he pursues with eagerness whatever strikes him most forcibly. His studies resemble the warmth of his disposition; struck with the great and sublime, his taste, though elegant and refined, prefers the glowing and animated conceptions of a Tacitus to the softer and more delicate graces of a Tully."

"Coxe and Law," says the Quarterly Reviewer, "looked upon each other as men pressing forward to distinction, but with the feeling rather of partners than of competitors in honour. The mind of Mr. Law was already filled with that ardent and unrelaxing ambition which accompanies the consciousness of great powers, and seems implanted where they exist for the purpose of bringing them into action. He blamed the reflection of Johnson, that riches, authority, and praise, loose all their influence when they are considered as riches, which to-morrow shall be bestowed on another; authority, which shall this night expire; and praise, which, however merited, and however sincere, shall after a few minutes be heard no more. Considerations of this kind, said Law, may be carried much too far, and while they unnerve the arm of impatience, may slacken the sinews of industry, and destroy hope, emulation, and honest ambition, the strongest motives to every thing worthy, great, and noble. 'Of all things in the world,' he once observed, 'I abominate a novel that ends unhappily!' Impressed with the efficiency of temporal rewards as incentives to exertion, his mind revolted even at a work of fiction which kept these motives out of sight. The more advanced scholarship of Mr. Coxe was of material service to his friend in the acquaintance which he was now maturing with ancient and modern classics; and the taste of both was improved by an interchange of criticism. Mr. Law's comments were judicious, blunt, lively, and full of strong and often characteristic feeling. His favourite writers at that time have been already mentioned. He resented with a just warmth the weak exuberances of Lucan. In reading Sophocles' Ajax, he scorned the thick-skulled hero. Nothing in English literature delighted him more than Absalom and Achitophel, and his judgment in this instance appears to have been unbiassed by any political sympathy with the poet, for, in speaking of Hume, he declared in the broadest terms his displeasure at the lenity of that historian to James II. He defended on the most defensible points the then recent publication of Lord Chesterfield's Letters. Mr. Coxe attacked them without reserve, and wrote a saucy parody on the assiduous promptings

and circumstantial admonitions of the courtly father. Mr. Law conceived, but did not follow up, the happy idea of an answer from young Stanhope, acknowledging his various difficulties and distresses, and lamenting his failures with *la petite Blot.*"

This caricature the young collegian was well qualified to draw, for he would never sacrifice to the graceful and the delicate, but loved rather, in the intervals of study, to join those roisterers who roused the chimes at midnight. His grasp of learning was strong but desultory, and it is to the want of continuous attention that we may ascribe his not attaining the very highest mathematical honours, for he was gifted with a strong reasoning mind, and could fathom the depths of analytic calculation. In 1771 he came out of the schools third wrangler, his elder brother, afterwards Bishop of Elphin, having been second wrangler five years before, and his younger brother, the late venerable Bishop of Bath and Wells, becoming also second wrangler in 1781. Law had not set his heart on bearing away the first prize, and in after-life used to indulge a hearty laugh (there was bitterness in the laugh, however) at the ideal regrets of that elder brother, who went down to the grave lamenting that he had lost the empty glories of the tripos, which appeared to rank higher in his estimation than the substantial dignities of the prelacy and 10,000*l.* a year.* In addition to his mathematical honours, Law was first gold medallist, or (to explain the term to non-university readers) the greatest proficient that year in classical learning. In 1772 the Members' Prize of fifteen guineas for the second best dissertation in Latin prose by under-graduates, and the following year, the same prize for the second best dissertation by bachelors, rewarded his competition. These were sufficient chaplets for the young academician to gather, and he willingly abandoned to men of more poetical temperament the contest for Sir W. Browne's medals, Greek and Latin ode and epigram.

A selection of names from the Cambridge Tripos paper will prove, more conclusively than any rhetorical statement, the value of academical honours, especially to those who

* Croly's History of Geo. IV.

study the law. The following may be instanced out of a still larger number: —

1766. Trinity—Robert Graham (Baron Graham), Third Wrangler.
1766. Trinity—Pepper Arden (Lord Alvanley), Twelfth Wrangler.
1771. Peterhouse—Law (Lord Ellenborough), Third Wrangler.
1771. John's—Lawrence (Sir Soulden), Seventh Wrangler.
1777. Emmanuel—Sutton (Lord Manners), Fifth Wrangler.
1787. John's—Littledale (Sir Joseph), Senior Wrangler.
1794. Trinity—Copley (Lord Lyndhurst), Second Wrangler.
1799. Trinity—Tindal (Chief Justice), Eighth Wrangler.
1800. John's—Shadwell (Vice Chancellor), Seventh Wrangler.
1803. King's—Parke, James (Baron), Fifth Wrangler.
1808. Caius—Bickersteth (Lord Langdale), Senior Wrangler.
1809. Caius—Alderson (Baron), Senior Wrangler.
1810. Trinity—Maule (Sir W. H.), Senior Wrangler.

Three memorable years—three contemporary judges carrying off the highest prizes. At the bar there have also been several other distinguished lawyers senior wranglers: —

1786. Trinity—Bell, Senior Wrangler.
1803. John's—Starkie, Senior Wrangler.
1816. John's—Jacob, Senior Wrangler.
1823. John's—Cowling, Senior Wrangler.

Not to mention more recent examples. Many of these laborious prizemen, afterwards judges, were rewarded also with the Chancellor's medal for their proficiency in classical learning. We read in the proud list of classical honours the names of Tindal, Parke, Alderson, Mr. Justice Dampier, Mr. Justice Williams. We need not linger over Craven scholarships, Browne's gold medals, and Smith's prize, usually the guerdon of the first and second wranglers, or pause to inquire how it came to pass, that Scarlett and Follett should have taken a plain degree. The careless or dissipated student and fellow-commoner may neglect college studies, and slight university rewards, but, as a general rule, the reading man and successful bachelor becomes the soundest lawyer and most able judge. In the sister university, Lords Eldon, Stowell, and Tenterden, and Mr. Justice Taunton, gained all the prizes that a university, most thrifty in its honorary distinctions, had to bestow, whilst Mr. Justice

Coleridge stood alone in the first class of classics, a rare, and, we believe, unprecedented honour.

Being elected a fellow of his college, Law quitted Cambridge in 1773, and entered himself of Lincoln's Inn. His proud, energetic, and enduring spirit depicts itself very strongly in the following letter, which he wrote at this time to his friend Coxe on entering a pleader's chambers.

"June 18, —73, Temple, Friday Night.

"After holding a pen most of the day in the service of my profession, I will use it a few minutes longer in that of friendship. I thank you, my dearest friend, for this and every proof of confidence and affection. Let us cheerfully push our way in our different lines,—the path of neither of us is strewed with roses, but they will terminate in happiness and honour. I cannot, however, now and then help sighing, when I think how inglorious an apprenticeship we both of us serve to ambition, while you teach a child his rudiments, and I drudge at the pen for attorneys. But if knowledge and a respectable situation are to be purchased only on these terms, I for my part can readily say, hâc mercede placet. Do not commend my industry too soon; application wears for me at present the charm of novelty; upon a longer acquaintance I may grow tired of it."

He did not grow tired, however, but applied his morning's toil and midnight musing in the chambers of Mr. (afterwards Baron) Wood to the subtleties of special pleading, a science which forms the surest, though assuredly not the smoothest, path that leads to legal fame. Following the friendly counsel and example of Mr. Justice Buller, who by the same methods had obtained a puisné judgeship at an age unprecedented for its earliness, that of thirty-two, and who soon became a patron to the eager student, as a spirit congenial to his own, he determined, as an apt introduction to professional employment, on completing his two years of pupilship, to practise special pleading, on his own account, and pursued that dry but ingenious study for several years with distinguished success. It was not till he had secured, by the reputation of science and skill, a firm connexion with some respectable attorneys, that he ventured on being called to the bar in 1780. He selected the Northern Circuit, of which Wallace and Lee were at that period the leaders, and was, immediately on joining it, rescued from the stigma

which attaches itself, somewhat unjustly, to the character of a briefless barrister. Mr. Mellor of Ashton-under-Lyne, in Lancashire, claimed the distinction of being the first who welcomed the new comer with a brief, and rescued him at once from the misery of carrying "*unam purpuream baggam flaccescentem omnino inanitatis causâ.*" But independently of his high repute as a special pleader, there were extraneous causes which induced a rapid accession of business. In the jealous profession which he had chosen, to which, more than to any other, the saying may be truly applied, that 'the race is not always to the swift, nor the battle to the strong, nor bread to men of understanding, nor honour to men of skill, but time and chance happeneth to them all,' the adventitious alliance of friends and connexions is often wanting to launch the young adventurer on the tide of fortune, and it is from the absence of these in the first instance that so many are left embayed or stranded. His father's name was a passport of favour to Mr. Law at Appleby and Carlisle, and Mr. Wallace, whose sister had married the Bishop of Elphin, volunteered whatever influence he could professionally exercise in his behalf.

Law had now caught the beam of good fortune, and, to secure it, married, in October 1782, the only daughter of George Phillips Towry, Esq., R.N., a lady of celebrated beauty, and whose fortune, though very considerable, was not the chief of her dower. She was born to be the wife of a great lawyer, being descended on the mother's side from Sir Thomas More, and is described to have been so exceedingly lovely, that passengers would linger to watch her watering the flowers—such was the fashion of the day—on the balcony of their house in Bloomsbury Square. With this charming heiress the lucky lawyer led a life of uninterrupted private happiness for nearly thirty-five years, ruffled by none of those storms which serve to quicken the calm of matrimony, and prevent it from becoming what Paley dreaded, "verra flat."

Not long after his marriage, Mr. Law was introduced to the conduct of a cause, too momentous in itself, and which exercised too great a sway over the future fortunes of the

intrepid leader to whom it was entrusted, not to require more than a passing notice. When Erskine declined to undertake the defence of Warren Hastings, from a feeling of delicacy, perhaps too scrupulous, lest it should involve the advocate with the leader of his party and his own personal friends, Sir Thomas Rumbold, who had married Law's sister, made him known to the impeached governor; and he was engaged to lead the cause of the defendant, a high and arduous task for a young man of only eight years standing at the bar. — The trial was alike unprecedented in its intrinsic magnitude — in the depth of interest which it excited — in the extent of time, and space, and detail, which it occupied — in the grandeur of the topics it involved, and the greatness, no less moral than adventitious, of the managers of the impeachment. In the manager's box were inclosed Burke, Fox, Sheridan, Windham, and Grey, supported — should they require support — by the professional talents of Dr. Lawrence, Mansfield, and Piggot; a phalanx unmatched in mental prowess, and rich with the spoils of the ransacked world of eloquence. When their stupendous chief, who rose far above the common stature of human intellect, had closed his most emphatic charge: "I impeach Warren Hastings in the name of our holy religion, which he has disgraced: I impeach him in the name of the English constitution, which he has violated and broken: I impeach him in the name of Indian millions, whom he has sacrificed to injustice; I impeach him in the name and by the best rights of human nature, which he has stabbed to the heart. And I conjure this high and sacred court not to let these pleadings be heard in vain:" — the very peers who had to try the charge repeatedly exclaimed, "hear! hear!" — some of the most distinguished of the peeresses fainted away at the recital of the horrors which his fertile imagination conjured up against the agents of the accused; and had the coronoted judges proceeded immediately to their Painted Chamber, and voted forthwith, there is little doubt but they would have pronounced a judgment of guilty almost by acclamation. It required strong nerves, readiness of mind, perfect self-possession, and undaunted energy, to combat,

with any chance of success, such a formidable array of rhetoric and prejudice: but, fortunately for his client, Law possessed the requisite courage and ability; he was admirably seconded by Dallas and Plumer, and girded himself fearlessly to the encounter. If we may give implicit credit to the narrative of Miss Burney, a devoted follower of the court, and who shared with her royal patrons a strong predilection in favour of the accused, the generally dauntless advocate was unmanned at first by the strangeness and grandeur of the scene, and by his appreciation of the matchless power of intellect opposed to him, to such a degree, as to be disabled from doing full justice to his client or himself. "To hear the attack, the people came in crowds; to hear the defence, they scarcely came in tête-à-tête. Mr. Law was terrified exceedingly, and his timidity induced him so frequently to beg quarter from his antagonists, both for any blunders and any deficiencies, that I felt angry with even modest egotism. We (Windham and I) spoke of Mr. Law, and I expressed some dissatisfaction that such attackers should not have had able and more equal opponents. 'But do you not think Mr. Law spoke well,' cried Windham; 'clear, forcible?' 'Not forcible' cried I; 'I would not say, not clear.' 'He was frightened,' said Windham; 'he might not do himself justice. I have heard him elsewhere, and been very well satisfied with him, but he looked pale and alarmed, and his voice trembled.' In his second oration," continues Miss Burney, "Mr. Law was far more animated, and less frightened, and acquitted himself so as almost to merit as much commendation, as, in my opinion, he had merited censure at the opening." She complained to Windham of Hastings kneeling at the bar. "'Tis a humiliation," he said, "not to be wished or defended. It is indeed, a mere ceremony, a mere formality, but it is a mortifying one, and so obsolete, so unlike the practices of the times, so repugnant from a gentleman to a gentleman, that I myself looked another way; it hurt me, and I wished it dispensed with. I did not think it right to look at Hastings during Burke's speech." "I had a great inclination," says the lively novelist, "to beg he would recommend a little of the same decency to some of his colleagues, among whom,

are three or four that even stand on the benches to examine him during the severest strictures with opera-glassess. Fox had looked full at the prisoner upon every hard part of the charge. Windham gave up this point without defence, except telling me, it was from the habit of the House of Commons, as Fox was a most good-humoured man, and, by nothing but habit, would have been betrayed into such an error."*

But though the prisoner and his friends might be put to shame at first by the virulence of the attack, they rallied during the progress of the trial, and were generally successful upon points of law. Their objection to the wish of the committee, urged by Fox, to proceed article by article, the counsel triumphantly established. It was most important for the interests of the defendant, that the whole evidence in support of all the charges should be heard before he entered on his justification. In the course of his argument the advocate vehemently reproached Burke for the harsh and cruel manner in which he had opened the prosecution, and said it was similar to the proceedings against Sir Walter Raleigh; Fox protesting, in vain, that he was commanded by the committee not to suffer such gross and indecent liberties to be taken in a case where the Commons of England were the prosecutors. The unruly manager was pinned down at every point to the strict rules of legal evidence, and greatly did his proud spirit chafe at the metes and bounds, within which he found himself confined. He querulously remonstrated at the accused resting his defence on quibbles, and appearing not to look for anything more honourable than an Old Bailey acquittal, where, on some defect in the evidence, the prisoner is acquitted by the jury, receives a severe reprimand from the judge, and comes away with the execration of the whole court. He argued, that whatever rule of law stood in the way of substantial justice could not be binding on the Lords; a most dangerous doctrine, which Law protested against in his own name, and in that of the people of Great Britain.

One of the main grounds of charge in the speech against the illustrious ex-governor was the oppression practised by

* Memoirs of Madame D'Arblay.

one of his agents, Dely Sing; and the keen lawyer objected to the admission of this evidence, because oppression was not charged in the articles of impeachment; at the end of the articles, indeed, the Commons had said, "to the great oppression and injury of the said people," but these words must be considered inferences of law, and not as substantive charges, precisely in the nature of those words in indictments, "contrary to the peace of our said lord the king." "What," cried Burke, "to tie father and son together and scourge them cruelly, an inference of law! The Commons were not clerks but laymen, and, as such, pursued the ends of justice without the niceties of special pleading. The Commons of Great Britain were not bound to state their charges with the same precision to which special pleaders were bound in the courts below. The Commons were plain unlettered laymen."

Such sophisms were not less futile than alien from the spirit of the law, and the Peers resolved, accordingly, that it was not competent to the managers to put the question of oppression, or give evidence of the cruelties exercised by Dely Sing, the same not being charged by the article then under consideration. Burke's remonstrance was more eloquent than true. "If, in the pursuit of such criminals, the Commons, who could have nothing in view but substantial justice, were to be stopped at every step by objections drawn from technical rules, and forms of pleading, then would the most dangerous criminals escape the vengeance of offended justice. Parliamentary impeachments, which were the principal, if not the only security for the preservation of the constitution, would be nugatory and vain; and the most corrupt ministers might pursue the most anti-constitutional career unawed by responsibility." To this casuistry Law made an impassioned rejoinder. "Their Lordships could not, if they would, admit the recital of these cruelties without violating the clearest rules and principles of law. But let the Commons put the detail of these shocking cruelties into the shape of a charge which my client can meet,—let them present them in that shape at your lordships' bar, and if the gentleman, for whom I am now speaking, does not falsify every act of cruelty that the honourable manager shall attempt to prove upon him,

may the hand of this house, and the hand of God, light upon him!" While these two ardent minds were thus conflicting on points of evidence, it was impossible that angry flashes of temper should not be produced by the collision.* On one occasion Law rose to complain of delay: "The right honourable manager always went in a circle and never in a straight line. They owed it to their common character to prevent unnecessary delay." "Common!" angrily interrupted the manager, "I can never suffer the dignity of the House of Commons to be implicated in the common character of the bar! The learned counsel may take care of his own; we know the dignity of our station!" With similar intemperance, upon Burke saying that the conduct of Hastings, in resisting the production which he himself had authenticated, was audacious, Law complained of this expression as indecent. Burke would not retract the expression. The Chancellor interposed, and said that delicacy should prevail in a case of this kind. Just before an adjournment, when the house was at pine-apple heat, Mr. Law said, unless the prosecutor could establish, in evidence, the charges brought by him against a prisoner, it ought to pass for slander and calumny. Fox would not consent to proceed in the trial till their lordships should have given an opinion on the expression. The Peers were on the point of retiring, when the Chancellor said it was indecent to apply the terms slander or calumny to any thing that was said by one of the managers, and that such expressions must not be used. The flashes of Burke's wit shot brightly across these angry fires, and illuminated the interminable discussion.

"The Rajah had been arrested at the hour of his devotions. It was alleged, in extenuation of the disgrace, that he was not a brahmin. Suppose the Lord Chancellor should be

* The following epigram, thrown to Burke in court, and torn by him to shreds, has been always attributed to Law, but erroneously:—

"Oft have we wondered, that on Irish ground
No poisonous reptile has e'er yet been found;
Revealed the secret stands of Nature's work,
She saved her venom to create a Burke!"

The real author was one Williams, notorious by his nom de guerre, Anthony Pasquin.

found at his devotions, (the chancellor was Lord Thurlow), the keeper of the King's conscience, suppose that he should be taken away, would it remove the indignity that he was not a bishop? No! the Lord Chancellor would know and feel the disgrace. He would think of the devotion he had lost, and he would not care whether he were a bishop or no!" "None," says the reporter, "were grave at this sally but the Chancellor himself," who looked like Jupiter Tonans, and cared as little for exercises of piety.

Mr. Law's sarcastic and personal pleasantry was sometimes played off with effect upon the manager's box. An important point coming on for argument when only Burke and two or three more were present, Mr. Michael Angelo Taylor among them, little and very pompous, Law commenced his objection: "It is a pity, Sir, to raise a discussion on this matter; this is no doubtful question of political expediency, it is a mere point of law, and my honourable friend there (pointing to Michael Angelo), from his accurate knowledge of the law, which he has practised with so much success, can confirm fully what I say." Michael puffed and swelled, and almost assented. Burke was quite furious, and run to him and shook him, saying, "You little rogue, what do you mean by assenting to this!"

Another day, when the manager wanted to go into the history of the Mahratta war, filling seven folio volumes, the counsel said, "It would be an insult to their lordships, and treachery to his client, were he to waste one moment in observation." The evidence was disallowed; and the infuriate manager fulmined forth his joy that there were some persons among the audience of the day—the Turkish ambassador and his suite were present—who did not understand English, as the insolent remarks of counsel would be a disgrace to a Turkish court of justice. At a later period of the trial, Law having called on the manager to retract an assertion which was proved to be unfounded, Burke replied with dignity, "My lords, the counsel deserves no answer."

But it was not only with his grave displeasure that the intrepid advocate had to contend: the keenly-tempered shafts of Sheridan's wit were constantly directed against him. That

rhetorical senator having stated that the treasures in the zenana of the begums were an offering laid by the hand of piety on the altar of a saint, the learned counsel asked, how the lady was to be considered as a saint, and how the camels, part of the treasure, were to be laid on the altar? Sheridan said, that it was the first time in his life that he ever heard of special pleading on a metaphor, or a bill of indictment against a trope; but such was the turn of the gentleman's mind, that when he attempted to be humourous, no jest could be found, and when serious, no fact was visible. "There could be little fame in the arena," he contemptuously added, "by throwing an antagonist, who was forced to come on crutches." The taunt was remembered to Sheridan's cost, and we shall see presently with what force he was himself thrown to the ground.

Eloquent and witty as the managers were, they kissed the dust before their legal antagonists upon questions of law and points of evidence. They were rash and improvident; not only bringing forward, as evidence, matter which a young and inexperienced advocate could hardly have advised, but re-producing and, after repeated decisions against them, re-arguing the points with unabated perseverance, and at a pitiless length. In twenty out of twenty-three instances, the decisions were against the managers.* The necessary consequence was interminable prolixity and delay.

"A witness of mine," said Warren Hastings, "staid one year, and then requested me to dispense with his evidence, that he might return to his service in India. I cheerfully consented. That gentleman accordingly went to India, served with credit two campaigns under Lord Cornwallis, is again returned to England, and is again in attendance to give his evidence on my defence."

Not till the seventy-third day of the trial, when it had now "dragged its slow length along" to the beginning of the fifth year, in February 1792, did Law enter on the defence, which occupied three whole days. The imaginations of all around had become orientalized: they had

* Adolphus's History of England.

been so long accustomed to the discussion of enormous deeds perpetrated on the banks of the Ganges and the Indus, that their very language seemed to have imbibed the spirit of eastern efflorescence. Law alone disdained these foreign ornaments; from first to last he continued the keen, close reasoner, the wary and subtle lawyer; ready to grasp, at any moment, the lubricity (we adopt his own phrase) of his antagonist's propositions; clothing strong thoughts in strong and apt words, unencumbered by adventitious decorations, and scorning those tricksy phrases, which had 'tickled the ears of the groundlings.' His exordium was not wanting in that grave and dignified solemnity which seemed best adapted to the occasion. "Their lordships," he remarked, "were now entering on the fifth year of a trial, for which the history of this or any other country furnished nothing like a parallel; and it at length became his duty to occupy somewhat longer the harassed and nearly exhausted attentions of their lordships, and exercise reluctantly the expiring patience of his client. Mr. Hastings, by the bounteous permission of that Providence which disposes of all things, with a constitution weakened by great and vigorous exertions in the service of his country, and impaired by the unwholesome influence of a remote climate, suffering from year to year the wounds which most pierce a manly and noble mind —the passive listener to calumny and insult—thirsting with an honourable ardour for the public approbation which illustrious talents and services are ever entitled to, while malignity and prejudice are going on to degrade him, and blacken his fair reputation in the eyes of his country—subdued by the painful progress of a trial, protracted to a length unexperienced before by any British subject, and of which there was no precedent in any former, and he hoped never would be in any future, period of the British history —under all these accumulated hardships, Mr. Hastings was alive this day, and kneeling at the bar of their lordships to implore the protection, as he was sure of the justice, of that august tribunal. To a case pampered—he had almost said corrupted—by luscious delicacies, the advocates of his client could only bring plain facts and arguments: they

would show that eloquence had been substituted for proofs, and acrimony supplied the place of evidence. He could never be brought to believe that justice was the end looked for, where vengeance was the means employed to attain it." * * *"The name of Gornga Sing has been clamourously shouted from one end of the British dominions to the other as the monster of India, offending Heaven by unheard-of-crimes, brutifying the species, and blasting the very name of man. I declare before Almighty God, that, after the most minute research, the most attentive investigation, I am unable to fix on any one act of this man's life which I can term criminal; culpable may be applied to him, perhaps, but even that not highly. My client has been called Captain-General of Iniquity; a man with a heart blackened to the very core, who had been guilty of every crime, from the meanest lie to the foulest murder. He had been four years on his trial. It was the subject of eager curiosity in India. Had one man been found to utter a complaint against him?"

The speech of Mr. Law, though inferior as a composition to the one made by his junior, Dallas, which occupied five long days, for the orators measured time with an eastern prodigality, has been deservedly admired as a specimen of terse forensic reasoning, and a masterly elucidation of evidence. Burke spoke nine days in reply; and, holding up the 24th of the King, exclaimed, "You must repeal this act of parliament, you must declare the legislature a liar, before you can acquit Warren Hastings." He was acquitted, however, by a majority of nearly four to one; twenty-three against six voted him not guilty, the smallness of the division attesting how utterly weary the Lords had become of the apparently interminable trial, during whose progress there had occurred no less than one hundred and twenty-seven changes in the peerage; proving that the managers had "spun the thread of their verbosity finer than the staple of their argument."

The calm judgment of posterity, undazzled by party heat, has ratified the justice of the Lords' decision. Some even among the managers of the impeachment did not scruple to join in the tribute of respect, when, on the retired ex-

governor appearing in 1813 as a witness for the renewal of the East India Company's Charter, at the bar of the House of Commons, the whole house rose as one man at his entrance. Lord Cornwallis and Lord Teignmouth, whose experience and personal knowledge add weight to their testimony, declare that the natives of India in those very provinces where his cruelty and alleged oppression had been most declaimed against, expressed an affectionate enthusiasm in Mr. Hastings' behalf. Burke, alone, remained unconvinced to the last, and exhorted Laurence with his dying-breath to collect and publish an authentic report of the trial. "By this you will erect a cenotaph most grateful to my shade, and will clear my memory from that load which the East India Company, King, Lords, and Commons, and, in a manner, the whole British nation, (God forgive them,) have been pleased to lay, as a monument, on my ashes. It has cost the nation near 300,000*l.*"*

If the expenditure had been twice as large, the money would still have been well bestowed, as the investigation taught the natives of the East, that to the Parliament of Great Britain they might ever look for redress from injury, and protection against high-handed violence.

The gratitude of the client to his counsel was large and liberal. Besides the sum of 1,500*l.*, which was distributed among his three advocates for drawing up answers to the articles of impeachment, Law received nearly 3,000*l.* in fees; not too ample compensation for the distraction from other business, which his advocacy imposed upon him. So harassing was its protracted length, that he declared at one time he would have given half his fortune to be freed from its shackles. They would form a very inadequate conception of the benefit which accrued to him, who should weigh in the goldsmith's balance merely the amount of his recompense. It was impossible for one, who had stood up so fearlessly as the champion of accused innocence, in the presence of the most august tribunal the world ever saw—who had done battle, day after day, against the most gifted of the sons of men, and had filled the press with continual criticisms

* Laurence's Letters from Burke.

(whether disparaging or laudatory signified little) on his conduct of the trial, to have occupied so large a space in the public gaze, without a sensible increase in his personal reputation, and a consequent accession of business. Accordingly, from this era is dated the rapid advance of Law in Westminster Hall. Having distinguished himself also by arguments of great ability in several mercantile cases, those large public bodies, the commercial and trading companies of London, became emulous to retain him as their counsel; and from his intimate acquaintance with the principles of mercantile law, he justified and confirmed their preference. Erskine had rushed up with the brilliancy of a rocket to the highest eminence of his profession, and Law was in general selected for leader against that consummate advocate. In dazzling the fancy and winning over the passions by playful sallies, happy bursts of eloquence, and those touches of art which wore the guise of nature from their perfect artifice, Law was decidedly inferior to his dangerous rival. But give him a strong case, which only required the stamp and seal of sincerity to weigh with a jury; give him a client grievously wronged, and none could state his injuries with more indignant energy, or press with more awful severity on the consciences of twelve honest men, or extract the truth more forcibly with the forensic screw. He anglicized phrases on these occasions with peculiar aptitude and strength; as the Grecian orator, ἠστραπτ', ἐβρόντα, "he thundered, he lightened" at the head of the delinquent; and that peculiar test of skill, the amount of damages—for at this petty mark are launched all the thunders of the bar, in many an appalling case of crim. con. and seduction—bore witness to his power. He was not quite Erskine's equal in those physical advantages of form and stature, which are justly regarded of high moment to the orator, nor were his manner and delivery equally pleasing. His contemptuous neglect of the tricks and graces of rhetoric might not unfrequently be of service to him in those cases, where a statement of provocations, and a demand of redress, are not the less sure of controlling the judgment and subduing the heart, for being plainly and inelaborately made. But this disdain of discipline was in general calculated to diminish the impression of his efforts.

He flung his arms forward with a vehemence that seemed uncouth, and, in the excitement of his feelings, strained the tones of his voice, naturally somewhat harsh, to a height that jarred the ears of the audience. In legal questions, and points of practice or pleading, those pitfalls which are laid in most cases of magnitude to catch the feet of the unwary, he stood greatly the superior of his rival, for his mind was saturated to its inmost depths with the letter as well as spirit of the law; he had an inherent taste for that legal phraseology, which never seemed to flow freely from the lips of Erskine. The morning that had seen Law pinioned to the desk was loitered away by Erskine in the lassitude of his military or naval profession; so multifarious, indeed, had been his occupations, or rather absence of occupation, and so desultory his ambition, that the sarcasm of his antagonist at a later period appears to be no less bitter than just: "I expect to see advertised, ere long, 'Sermons in the Camp and on Quarter-deck, by the late Lord Chancellor Erskine.'" The excellence of these skilful players displayed itself even to those who were ignorant of the game; thus, on the trial of Walker, a merchant of Manchester, for sedition, which took place at Lancaster in 1792, on the counsel pressing for the admission of some evidence that was objected to, Erskine theatrically exclaimed, "Good God, where am I?" Law quietly informed him, "In a British court of justice!" "How is my client to be exculpated?" he indignantly ejaculated. Law informed him how; "By legal evidence!" On his vociferating with much vehemence of voice and manner, "I stand before the people of England for justice," the attorney-general of the county palatine retorted with equal spirit, "I am equally before the people of England, for the protection of the people of England; if you rise in this tone, I can speak as loudly, and as emphatically; I will prosecute this defendant with all the liberality of a gentleman: there is nothing which has betrayed improper passion on my part; but no tone or manner shall put me down." "I know, gentlemen," said Mr. Law to the jury, "what I have most to fear upon this occasion; I know the vigour and energy of the mind of my learned friend. I have long felt and admired the powerful

effect of his various talents. I know the ingenious sophistry by which he can mislead, and the fascination of that eloquence by which he can subdue, the minds of those to whom he addresses himself. I know what he can do to-day, by seeing what he has done upon many other occasions before." They admired and respected each the abilities of the other too highly, not to pay a ready tribute of applause, when the heat of disputation had passed away, and rarely yielded in their intellectual skirmishes to those exacerbations of temper which sometimes, less now than heretofore, deform the discussions of the bar; imitating rather the gentle courtesy of the heroes of the Iliad, who shook hands and exchanged weapons in the pause of contest. In this spirit Erskine paid the happy and classical compliment (and who better than he could afford to pay a compliment to the prowess of his friendly opponent?)—

"Stetimus tela aspera contra
Contulimusque manus; experto credite quantus
In clypeum assurgat, quo turbine torqueat hastam."*

Mr. Law gave up the case at Lancaster in disgust, but directed Dunn to be tried for perjury, and the sentence of Mr. Justice Rooke was, that he should stand once in the pillory, and be imprisoned for two years in Lancaster Castle.

In the state prosecutions, which marked the dark era of agitation and turbulence that followed the French revolution, Law bore an active part. On the trial of the Earl of Thanet, Mr. Fergusson (the late member for Kirkcudbright), and others, for a conspiracy and riot at Maidstone, tried at the bar of the King's Bench in 1798, he encountered his old antagonist Sheridan. The prosecution was, as we have seen, a most extraordinary one, that of a peer of the realm, a barrister, and other gentlemen, for rioting in court, and conspiring by tumult to procure the escape of O'Connor, a prisoner accused of high treason, from the dock. The case had lasted all day, and late in the evening Sheridan was called as a witness for the defence. Law doubtless remembered the rough treatment, which he had previously received at his hands, and gave full retribution in a cross-examination

* Canning, many of whose happiest quotations were plagiarisms, once applied these lines to Lord Brougham.

of peculiar severity, part of which is too characteristic of both parties to be omitted.

Q. "I ask, as an inference from their conduct, as it fell under your observation, whether you think Lord Thanet or Mr. Fergusson, or either of them, meant to favour Mr. O'Connor's escape, upon your solemn oath?"

A. "Upon my solemn oath I saw them do nothing that could be at all auxiliary to an escape."

Q. "That is not an answer to my question."

A. "I do not wish to be understood to blink any question; and if I had been standing there, and been asked, whether I should have pushed or stood aside, I should have had no objection to answer that question."

Q. "My question is, whether, from what you saw of the conduct of Lord Thanet and Mr. Fergusson, they did not mean to procure the escape of Mr. O'Connor, upon your solemn oath?"

A. "The learned counsel need not remind me that I am upon my solemn oath. I know as well as the learned counsel does that I am upon my oath, and I will say that I saw nothing that could be auxiliary to that escape."

Q. "No man can misunderstand me; I ask whether, from the conduct of Lord Thanet, or Mr. Fergusson, or either of them, as it fell under your observation, you believe, upon your oath, that they meant to favour the escape of Mr. O'Connor?"

A. "I repeat it again, that from what either of them did, I should have had no right to conclude that they were persons assisting the escape of Mr. O'Connor."

Q. "I ask you again, whether, from the conduct of Lord Thanet, or Mr. Fergusson, or either of them, upon your oath, you believe that they did not mean to favour the escape of O'Connor?"

A. "I have answered it already."

Upon this the judge, Lord Kenyon, interposed. "If you do not answer it, to be sure we must draw the natural inference;" and Sheridan resumed, "I have no doubt that they wished he might escape, but from any thing I saw them do, I have no right to conclude that they did."

Q. "I will have an answer: I ask you again, whether,

from their conduct, as it fell under your observation, you do not believe they meant to favour the escape of O'Connor?"

A. "If the learned gentleman thinks he can entrap me, he will find himself mistaken."

On the question being repeated, Sheridan reiterated, "My belief is, that they wished him to escape, but from any thing I saw of their conduct on that occasion, I am not justified in saying so;" and the controversy ended. It is clear that Sheridan was pressed to his disadvantage, and that he did his friends disservice by this boyish playing with the question, but a love of mischief characterised the man. His friends were convicted. In after-dinner conversation he was wont to give a poetical version of this colloquy, and to report that the counsel captiously observed, "Do pray answer my question without point or epigram." "You say true," I retorted, "your questions are without point or epigram." The short-hand writer's notes contain no mention of this clinch, which seems to have been elaborated with as much diligence, as if it had been worthy of the wit, that could polish the diamond more readily than prepare the Bristol paste.

Law had now mounted step by step the ladder of legal preferment; he had obtained a silk gown in 1787, was made attorney-general of the County Palatine of Lancaster in 1792, and had long been marked for the highest station; but Pitt's ministry, firmly seated, looked upon the son of the Whig prelate with cold suspicion, and legal promotions were slow. He had led his circuit for several years without a rival; Serjeant Cockell, who was profanely called the Almighty of the North, and was generally opposed to him, having, in his phrase, a most incurious nescience of law. Of Mr. Law's gallantry out of court, and humanity within, there are several circuit anecdotes. He once led a cause at York which turned on the question whether or not a certain person who had ridden a horse was a gentleman; the conditions of the race requiring the riders to be gentlemen. The jury found for Mr. Law's client in the negative. The person blustered and talked big, and threatened to call out Mr. Law. That gallant individual put off his journey to Durham for half a day, and walked about booted and spurred before the

coffee-house, the most public place in York, ready to repel force, if offered, by force, because personal chastisement had also been threatened; no message was sent, and no attempt made to provoke a breach of the peace.*

Of his considerate conduct as public prosecutor, he once gave when judge a striking reminiscence. "I recollect a case upon the northern circuit, of which I had the conducting, and which affected the life of the party, whose life was actually forfeited. In that case evidence of similarity of hands was proposed to me, and I was of opinion it was not evidence to be received in a criminal case. A person had robbed the house of a poor man, with whom he was most intimately acquainted. The person whose house was robbed had discovered the robbery, and suspected the robber. It occurred to the wicked mind of this person, who is suspected, to inclose in a letter a poisoned pill, with directions that he should take that pill, and that pill would enable him to discover who was the robber, and stating that, about an hour after he had taken it, he would see a man ride by, and that was the man that had robbed him. The poor man took the pill, and in the course of half an hour the pains came on, and in a short time he expired. His body was afterwards opened, and upon its being opened it turned out to be arsenic; and some particles of the pill adhered to the letter, by which it was ascertained to be arsenic. Now see the infinite importance of ascertaining by other circumstances who was the writer of this letter. I do not know whether it was written under any particular circumstances of disguise, but I called persons who knew the hand-writing, who had been at school with him, and who knew his character of hand: I had letters for the purpose of comparison at all periods of his life, but in the exercise of my judgment I thought it was not evidence fit to introduce, and sought for confirmation of the hand-writing. I considered life was at stake. It might be that some enemy had done this, and therefore I sought for confirmatory sources of evidence. I found a man going to a place very far distant, in the habit which he usually wore, and recognised by another man, who saw him go in the same

* Law Review.

dress to the post-office at Ripon, throw a letter in, and run away. With the addition of this evidence to that of persons who had seen him write, he was convicted."

On the breaking up of the Pitt cabinet, at the close of the year 1801, the law officers of the crown being promoted, Sir John Scott to the Common Pleas, and Sir John Mitford to the chancellorship of Ireland, Law gained the high station of attorney-general at a single bound, in February 1801; and on the 2d of March took his seat for the first time in the House of Commons, one of the discarded close boroughs offering that convenient entrance to the first law officer of the crown, which the Reform Bill has since rather prematurely closed.

Mr. Adolphus states the fact from private information, that when Addington offered Law the appointment of attorney-general, he observed, "That, as his ministry might be of short duration, and the sacrifice to be made considerable, comprising the lead of the northern circuit, to which there was no return, he could not expect an immediate answer, but hoped that in two days he might receive one." "Sir," said Mr. Law, "when such an offer is made to me, and communicated in such terms, I should think myself disgraced, if I took two days, two hours, or two minutes to deliberate upon it. I am yours, and let the storm blow from what quarter of the hemisphere it may, you shall always find me at your side."*

Mr. Best, in his Personal and Literary Memorials, relates, that when he (Law) first attended the levée after this appointment, he was asked by George the Third, "Mr. Law, have you ever been in parliament?" The answer was in the negative. "That is right: my attorney-general ought not to have been in parliament, for then, you know, he will not be obliged to eat his own words."

He was then fifty-one, an age generally considered too late for those who hope to acquire the fame of parliamentary orators. St. Stephen's Chapel is strewn with the wrecks of eminent lawyers, but Sir Edward Law was not added to the long and melancholy list. The vigour with which he threw himself into all legal and constitutional questions, and the

* Adolphus's History of England.

spirit with which he went out in all weathers as a debater, soon elicited the respect and attention of the House. He spoke with an energy that reminded the old members of Thurlow, on subjects connected with his peculiar functions; fearless, full of matter, and copious in diction, a hard hitter, even when he spoke carelessly. During a debate on the Prince's claim, when he remarked that the revenues of the duchy of Lancaster were placed under the control of Henry the Sixth, it was suggested from the opposition bench that the law was shortly after changed. "Ay," said the Attorney-General, "in times of trouble. The honourable gentlemen opposite seem well versed in the troubles of their country."

It fell to the lot of Sir Edward Law to prosecute Governor Wall for a murder committed by his orders twenty years before, when governor of Sierra Leone, in commanding a private to be flogged so severely, without holding even a drum-head court-martial, that he died a few days afterwards from the effects of his wounds. The accused had voluntarily surrendered himself, trusting to the length of time which had elapsed for impunity from his crime: and hoping to recover some money. There was a considerable property belonging to his wife in the hands of trustees, which he had frequently applied for; but they, knowing that he could not sue them for it without exposing himself to a criminal prosecution, resisted his application. Determined to free himself from this difficulty, and to be enabled to appear as plaintiff (he was outlawed), against the advice of Mr. Alley, he surrendered himself, and was brought before the Privy Council. He had lived for two years in London under the name of Thompson, but threw off his disguise, in the hope of impunity, and being able to sue, when acquitted, in his own name. In this he totally mistook the nature of the man whose duty it was to institute proceedings against him. The harshness with which the Attorney-General pressed the case excited much animadversion at the time, but undeservedly. He did not overstep the strict path of duty, though he rigorously pursued it to the boundary line; for the cruelties of the prisoner were so steeped in blood, that it was impossible to investigate the charges as a lawyer, without feeling them most acutely as a man. "I

will not," he said, in his admirable address, "merely discuss and canvass, but would rather, to a considerable degree, admit the validity of that excuse, if the foundation for it did exist in point of fact; and if mutiny or tumultuous disobedience by a military man to his military superior is not now brought forward, or has not been brought forward at any other time, as a pretence, and in order to serve as a cover and cloak for abused power, and the malicious perversion of legitimate authority—if there did exist in point of fact a mutiny within his Majesty's garrison, which it required the strong arm of power to suppress — if it was a mutiny so enormous in its size, so dangerous in its probable and immediate consequences, as to supersede the ordinary forms of trial for that or such like offences, I do not stand here to require of you, — God forbid I should, — that you should conceive this or any other man similarly circumstanced, as being other than not only an innocent, but even a meritorious man, who uses the effective powers with which his situation arms him, or which he has it within his reach to command and use, for the discharge of the trust, and the protection of the interests committed to him. But, gentlemen, if you shall find that there was no mutiny, — if mutiny exists only in pretence, and has been used as a colour to enable this person to inflict unauthorised punishment upon the unfortunate object of his vengeance, — then, indeed, instead of standing before you as a person innocent or meritorious, he stands before you charged with the highest crime of which a person invested with authority can be guilty, — with having abused the great trusts and authority of his situation, for the oppression of one of his Majesty's subjects, for whose protection, amongst other purposes, that authority was originally given."

The peroration of the Attorney-General is in the same lofty style of grave magisterial displeasure.

"If the prisoner can make out such a defence, — if he can make out substantially the crime of mutiny, I should be sorry to press him with the non-observance of any of the minor forms of trial, that is, supposing that there existed the crime of mutiny, and that the crime was announced to the party charged therewith, and that he had any opportunity for

his defence against it. But if there existed no crime; if none was charged at the time; if a silence is observed by the prisoner respecting the existence of any such crime at the time, when upon his return he should have announced both it, and the rigorous measures he had been obliged to adopt thereupon, to those to whom he was immediately accountable for the conduct of his government; if you find, in contradiction to the idea of any supposed mutiny, that he ventured to withdraw himself from his government at a moment when it would have been in violation of every duty which he owed his Majesty's service, as a soldier and an officer, so to have done, if a mutiny so dangerous as to supersede the necessary forms of law had existed on the very eve of his departure, and might be supposed not to have been even then fully suppressed — he will in that case have a difficult task of defence thrown upon him. If, however, he can upon the whole give you reasonable evidence of delinquency on the part of the person upon whom this punishment was executed, and a reasonable degree of necessity for executing it at the time, and in the manner and way in which it was executed, God forbid!—not only for his own sake, but for the sake of the discipline of the army and for the safety of us all, which in some degree depends upon the due enforcement of order and obedience in every department of public service — God forbid that a hair of his head should be touched! But if, after all, the charge of mutiny should evidently appear to you to be but a pretence brought forward to cover a malicious and unauthorised act on his part at the time when it was done; and if, from all the concomitant circumstances — if from circumstances immediately consequent upon the act at the time of his return—if from his flight shortly after that period, and his not proceeding to trial when the witnesses, who, he would have you believe, could have spoken immediately and effectually to his justification, were living and capable of being produced—if, from these and other circumstances, your minds shall be induced to form a conclusion wholly adverse to the prisoner, and if the facts shall fairly warrant you in so doing, however painful the result may be to the prisoner at the bar, his relatives and friends,—however painful the steps which

lead to such result may be to the feelings of those who are now urging the demands of public justice against him,—however painful it may be more especially to you, gentlemen, upon whose verdict, as a jury of the country, that result will immediately depend — it is my duty to ask, and your duty to give, that verdict which the facts of the case, and the due application of the law of the country to such facts may require, and to find him guilty of the crime charged upon him, if in the conscientious discharge of the solemn function cast upon you, you are warranted and required so to do. It will give me great satisfaction if he is able to establish, that there existed in this case such circumstances, as will make the crime with which he is charged not entitled to be denominated, and considered, as murder.

The evidence failed to establish any circumstances of extenuation, and Governor Wall was most justly condemned to pay with his own life the price of innocent blood. His inhuman cruelties had so hardened the multitude, that they hailed with exulting shouts his appearance on the scaffold, and triumphed in the knowledge that neither station, nor lapse of time, nor distance, would shield a convicted murderer from his just doom.

Sir Edward had only been Attorney for ten months, when the death of Lord Kenyon created a vacancy in the high office of Chief Justice of England, to which he instantly succeeded, almost without competition. There existed, indeed, one formidable rival, who would joyfully have accepted this congenial station, but the leaven of party politics prevented his accepting office under the Addington administration, and the less fortunate Erskine was soon elevated to a higher seat, for which his habits and course of study had totally disqualified him, and then ejected, to wither in a life of vacancy for nearly twenty years.

Sir Edward Law was raised to the peerage immediately on his elevation to the bench, by the style of Baron Ellenborough; taking his title from a little fishing town, in the immediate neighbourhood of which his family had held a small farm for several generations. Ministers, when they caused the patent of the peerage to be issued, followed the example set them

on the appointment of Mansfield and Kenyon. Their predecessors, Parker, Raymond, and Hardwicke, were not ennobled till after they had filled the office of Chief Justice. Sir Dudley Ryder was only to be made a peer on his retiring from the situation, and died before the patent was complete, and Sir John Holt remained a commoner. It has been recently contended that the last instance is most worthy of imitation, but surely without sufficient reason. The absence of ample wealth, with which to endow a peerage, can very seldom be objected to the fortunate lawyer who has risen to the high dignity of Chief Justice of England; nor is the danger of inundating the peers with law lords very imminent, when we remember that the four last individuals who held the office contrived to retain it nearly eighty years. Nor should any proposition be regarded with favour which has for its object to lower the bar, and restrict professional assiduity to no higher object than the acquisition of money.

Lord Ellenborough, having taken his seat in the House of Lords, became a frequent and useful debater on questions of constitutional law and general polity. His oratory, which was generally without premeditation, had vast unadorned power, but its effect was marred by ebullitions of temper. He threw his vigorous spirit into whatever topic he discussed, infusing a strength of mind and muscle, which could not brook restraint, or tolerate contradiction.

In the debate of 1803, on resolutions by Lord Fitzwilliam condemnatory of ministers, Lord Ellenborough said, "he could not patiently endure to hear the capacity of ministers arraigned by the incapable, or their want of knowledge impeached by those who knew nothing!" A striking specimen of his prevalent merits and defects is afforded in a speech which he made at the close of the session in 1805, in opposition to a bill for granting further remuneration to the Duke of Athol, who was represented to have surrendered the rights and revenues of the Isle of Man for a very inadequate remuneration. As the compact was made with government in 1765, it seemed too late to object to the fairness of the price given, and the upright spirit of the judge took fire at the idea of fraud. Holding up the papers "yet reeking from the press," he ex-

claimed in a loud and angry voice, "Never did I witness a gross job come into parliament in a more bodily form than this. To sanction such a proceeding will be to open a door on its hinges that will never again be shut. In a few days parliament will be dispersed, and let us not return to our respective homes with the stigma of having passed a bill like the present. Unfortunately (I make no charge against any one), but it does unfortunately happen, that when we return to our homes, after our duty in Parliament is at an end for the session, we cannot say that any useful treaty has been made with any continental power, that any negotiation has been brought to a successful termination; we cannot say that any thing has been added to the glory or to the honour of the country.-- Let us not then, at the conclusion of this session, during which, unfortunately, so little has been done for the honour or advantage of the country, have the burthen on our minds of having agreed to such a bill as this. Let us not, at a moment when all classes of the people are ground down with taxes, add to their burthens by *voting a boon to mendicant importunity.* If our supplies were unlimited, if we could draw upon them without any fear of exhaustion, if the resources of the state grew like the fabled Promethean liver under the beaks and talons of the vultures by whom they are lacerated and devoured, then indeed we might agree to such kinds of demands; but as they are not, it is our duty to watch over the interests of the people, and not to suffer their resources to be squandered in improper expenditure. However critical may be the times—however great may be our dangers—however hopeless the state of our finances, let us not, my Lords, imitate the conduct of sailors in a storm, who, when their situation is desperate and hopeless, when they see their vessel driving upon the rocks, abandon the sails, throw up the helm, and fall to plundering the chests. Let us rather, if we would avert the thunderbolts of human, or even, though I hope not, of divine vengeance, which may be ready even now to burst upon us, deck ourselves in the robes of virtue, that we may gain the respect of foreign nations, and the love of the people, of whose interests we ought to be the guardians and protectors. Impressed with all

these considerations, I feel it to be my duty to oppose the bill. Be the event what it may, 'liberavi animam meam.'"

The second reading of the bill was carried, notwithstanding this brave but austere remonstrance, by a majority of 24, there being of the peers 35 content, and 11 not content. But the words we have quoted were too hot and pungent to please the dainty palate of his hearers, and many of the "silken barons" expressed their shrill displeasure. Lord Mulgrave, in particular, lamented the coarse and harsh observations, which might surely have been qualified by other terms, and complained of the learned judge's boisterous and rude manner. "He should apply to his lordship what one of the characters of our immortal bard, Othello, applied to an old man: 'Signior, your age may more command me than your weapon.' Some of his expressions were fitter for demagogues in Palace-yard than for peers of the realm. If a person in a high and venerable situation did not adapt his expressions to the dignity of that House, nor to the character of his high office, he must feel it due to the dignity of Parliament, and due to the character of the Bench, to take notice of it as he felt."

The provocations given by the irritable temperament of Lord Ellenborough were, however, of frequent recurrence. So unconscious was he, in his ardour of debate, of the phrases which his indignant vehemence flung forth, that one day, after answering Lord Grey, who had accused him of citing a case in the petition of the city of London in the reign of Edward I., which was exactly the reverse of what he stated, and calling the charge "a base and calumnious imputation," he sat down with the remark, to the infinite merriment of the House, that he trusted he had vindicated his character without any asperity. The severe yet dignified castigation which Lord Holland subsequently inflicted on the angry Chief met with the plaudits and sympathy of the peers. That nobleman, in 1811, brought forward a motion for an account of all informations ex-officio in cases of libel, in a temperate and judicious speech, which elicited one of a totally different spirit from the judge, who, making a law against himself, remarked that "he knew nothing more to be depre-

cated in that House than violent and vague declamations resting on no grounds (hear, hear, from Lord Holland). The noble lord might call all that he had said a mere tirade; but in all that he had said, did he not bottom himself on facts? (hear, hear, from Lord Holland.) The cries of the noble lord could not convince him that he had not. He was used to tumults and alarms; they never yet could put him down. Were he to die the next instant, he never would yield for one moment to tumult!" The keen and cutting irony with which Lord Holland rebutted this unjust attack was long personally remembered by the House, and will richly reward perusal. The following is a short specimen: "My Lords, I must trespass for a few minutes on your time, for I feel myself called upon, not indeed to answer arguments, but to repel accusations and charges; not to combat objections to my motion, but to vindicate my character from aspersions, which have been thrown out, I will not say in a disorderly and unparliamentary manner, but at least in a style and tone which, fortunately for the dignity of your deliberations, is rare and unusual in this House. I have been told, not by inference, but in direct terms, that I am captious, that I am passionate, that I am indirect, and unmanly. I profess not the temper of bearing such charges with equanimity; and if I were to disguise my astonishment, I will say my indignation, at hearing them brought against me, I should, in fact, prove myself guilty of that insincerity with which I am charged. With respect to the vehemence or passion with which I may have expressed myself, I should have hoped that the learned lord would have had the charity to recollect that I never had the advantage of those judicial habits from which he has profited so much; and which, as they require from him, so they have no doubt taught him, that calmness and composure of mind for which he is so remarkable. The practice of such duties, and the exercise of such temper as these duties require, can alone bring the feelings of men to so perfect a state of discipline, and produce, even in the delivery of their strongest opinions, that dignified and dispassionate tone, which adds a grace to all the noble and learned lord's public appearances, and has so eminently distinguished his conduct on this night's debate.

I fear, my Lords, I shall never attain that composure of manner and command of temper, of which the noble and learned lord inculcates the necessity, full as much as he affords the example. Indeed, I must acknowledge that I shall not even aspire to emulate the model he holds out to me, and, while I admire his precepts, must confess that I have no ambition to follow his example. The clamorous invective, which has nothing to recommend it but authority, is as much clamour as the cries and shouts of a mob; and I hope that I shall have the courage and honesty to treat it, come from whom it may, with a due portion of that feeling, which the noble and learned lord so properly reserves for all clamour unfounded in reason."

This bitter retort was, it must be confessed, in this instance well merited, though deeply tinctured with the wormwood of party spirit.

Every reader will concur in the propriety of the censure which Sir James Mackintosh pronounced. "I was much delighted with the ingenious, temperate, and elegant speech of Lord Holland on the abominable multiplication of criminal informations for libels, and much disgusted with the dogmatism of Lord Ellenborough's answer. Lord Holland spoke with the calm dignity of a magistrate, and Lord Ellenborough with the coarse violence of a demagogue."

Lord Ellenborough was considered by the Opposition as a deserter from their side of the House, for he had been born and educated a Whig. But he was also an aristocrat by nature; his Whiggism from the first partook of that high and unbending character, which has no gravitation to the mob. On the great division of the party in 1792, he warmly seconded the opinions of those who thought that the prerogatives of the crown most required defence, agreed with Burke in his "Appeal from the New Whigs to the Old," and entered his energetic protest "against all graduates in the schools of republican philosophy, which meant pure, genuine, unadulterated atheism." Though regarded with marked coldness by the Pitt administration, he enlisted heartily under the banners of his conservative successor; and even when the Fox and Grenville cabinet invited him to share in their counsels, he

stipulated for an unconditional opposition to several liberal measures, and, among others, to the granting the Roman Catholic claims. "I, as long as I live," was his emphatic declaration, "and am furnished with faculties, either of body or mind, to struggle with effect, will manfully struggle, and, as far as in me lies, will avert the mischief which must result from the admission of persons who owe and yield an imperfect and defalcated allegiance to the state, into the entire and perfect rights of completely affianced subjects. I will resist this proposition now and for ever."

The most questionable act of Lord Ellenborough's public life was his acceptance of a seat in the cabinet, when he was Chief Justice of the Court of King's Bench. The precedent unadvisedly set by two such great, and learned, and exemplary men as Mansfield and Ellenborough, of mixing up the political with the judicial character, of sitting as cabinet ministers in detection of the treason which they might afterwards try as judges, and of exposing the independence of the judgment-seat to the most injurious, though, at the same time, most unfounded, suspicions, is one which every lover of the constitution must deplore, and the recurrence of which he would most strongly deprecate. The more we extol the dignity and heighten the attributes of the chief magistrate of criminal law, the more must we regret the indecorum of his appearing in a twofold character — of the cabinet minister trying political offences.

Mr. Wilberforce's friendly intercourse with Law had been maintained since their meeting on the Continent in the summer of 1785, and he now wrote to Lord Ellenborough on the evils of his having a cabinet office, thinking it most manly and fair to state his objections to himself. He returned a very handsome answer, and, when quitting office thirteen months later, he again alluded in a friendly manner to his friend's opposition: "Well, Wilberforce, I hope I have not done much mischief after all."

Subsequent reflection so completely convinced the Chief Justice of the wisdom of his friend's conscientious objection, that he stated to his son (the present Lord Ellenborough) that, although he did not think at the time there was any

harm in it, were the thing to do over again he should be no party to it. His justification of the appointment on the first view was embodied in the following letter to the Bishop of Elphin: —

"My dear Brother, "Bloomsbury Square, March 1. 1806.

"My entire occupations for some time past at Westminster and Guildhall, have excluded me from the means of learning any news worth sending you.

"A question comes on on Monday in both Houses which is brought forward under so much misconception of its true merits, and so much party heat and violence, that I shall not wonder if it is carried. The object of those by whom it is brought forward, is to obtain a vote of censure upon my appointment to a situation in the cabinet, on the ground of a supposed incompatibility in that situation in his Majesty's councils with my judicial situation and duties. I think it the more dignified and becoming course, not to attend the House upon the occasion. If any vote of the kind intended should be carried, it is my determination to resign my situation as a Privy Councillor; with the duties of which I shall consider the vote (if it has any meaning at all) as pronouncing my judicial function as incompatible. The vote, if come to at all, must be under an entire ignorance or misunderstanding of the history of the country, and the precedents respecting the situation I fill, its proper and usual duties, and the political duties which the Legislature and the Sovereign have from time to time, in the most anxious and important periods, connected therewith. You will find this displayed in the debate by Lord Grenville and Mr. Fox, who are fully masters of the subject. I have thought it proper to give you this hint, that you may be prepared to expect and to understand the conduct I am determined to adopt.

"Yours, my dear brother, ever most affectionately,

"Ellenborough."

Contrary to the learned lord's vaticinations, the ministry of All the Talents, though dead beat in the argument, triumphed in the division by a majority of five to one. It is a curious proof of the influence of party upon the result of all great political questions, that Opposition mustered in smaller numbers upon this cardinal point, in which they were right beyond all dispute or question, than upon almost any other constitutional motion of the day. The Chief Justice defended himself with warmth against repeated personal attacks, the bitterness of which may not improbably have strengthened his attachment to the prerogatives of the Crown.

The proud spirit of the judge would not capitulate to the force of public opinion (he was in after life sensible of his error), but, fortified by large majorities in both Houses of Parliament, which approved of his conduct, he continued to sit during the existence of that short-lived cabinet, on the extinction of which he bade farewell to the Whigs, and their counsels for ever. To uphold at all cost the apostolic hierarchy and interests of the Church of England — to maintain inviolate all the ancient rights of the Crown — to resist change in existing institutions as an intrinsic evil, to be hazarded only on a proved exigency, and to reform defects in the constitution slowly, warily, jealously, were the main articles of his political creed. What he freely thought, he freely spoke; fearlessly and eloquently would he inveigh against the liberal schemes of agitators, and stand prominently forth, whenever the occasion was justified by state necessity, as the intrepid champion of conservative opinions.

Following the examples of Thurlow and Kenyon, Lord Ellenborough on very rare occasions originated any legislative measure, but watched with vigilance and censorious jealousy the proposed enactments of others. He sneered at those statutes in embryo, which appeared to him to be framed to defeat their own object, and pointed out unsparingly the defects in bills sent up for their concurrence by the lower branch of the legislature, declaring that "they must not give encouragement to the sending up bills without the ordinary limbs and members — without either sense or composition." In this spirit, pushed perhaps to excess, he wounded the self-love of Erskine, by showing the defective wording of his bill for preventing cruelty to animals. He objected to the words "or otherwise abuse," as too large, and also to the term "wound." "A pig might get into a cottage and be eating the cottager's potatoes; the cottager might strike his pig with a shovel, and for thus wounding a pig might, under the bill, be imprisoned one month." He was also inclined to object to the other word "cut," for, when the law came to be applied, the term "cut" might be extended to the cutting of a whip.

The hypercritical nature of the objection may be inferred from the fact, that in a subsequent statute, commonly called Lord Lansdowne's Act, and passed to improve an enactment of his own, the very words, stab, cut, and wound, have been introduced without any disapprobation or difficulty, the legal meaning of the terms being readily ascertained; that is a cut where the whole skin is severed, and where the continuity of the skin is broken, there is a wound.

After considerable slashing, the much abused bill, which was intended to produce a new æra in legislation, passed the Lords, but was exploded by the ridicule of Windham from the table of the House of Commons.

The fame of Lord Ellenborough as a legislator is chiefly built on that important act which bears his name, and is graven indelibly in the statute-book; an act, under whose strict, but from dire necessity expedient, provisions, some hundreds of blood-stained beings have justly forfeited their lives. It is the 43 Geo. III. c. 58., intituled "An Act for the further prevention of malicious shooting, and attempting to discharge loaded fire-arms, stabbing, cutting, wounding, poisoning, and the malicious using of means to procure the miscarriage of women, and also the malicious setting fire to buildings." The act, after reciting, "Whereas divers cruel and barbarous outrages have been of late wickedly and wantonly committed in divers parts of England and Ireland, upon the persons of divers of his Majesty's subjects, either with an intent to murder, or to rob, or to maim, disfigure, or disable, or to do other grievous bodily harm to such subjects," directs that "such offenders shall suffer death as in cases of felony, without benefit of clergy." The Coventry Act and later Acts of Parliament had recognised the principle before the introduction of this compendious statute, and the censure attempted to be cast upon its noble author, for condensing and enlarging their several provisions, recoils on the heads of those who make it. For it can scarcely be contended with success, that the criminal who has evidenced his murderous intent by the use of deadly weapons, but whose malice has been defeated by the providence of God, ought not to suffer the heaviest penalty which the law can impose on persons

convicted of such a guilty purpose. In no case could a prisoner be convicted under this act, where the death, if death had ensued, would not have amounted to the crime of murder; and, as clear and decided malice must have been proved, it seemed due to the safety and well-being of society that its provisions, however highly penal, should remain in force. In one instance, indeed, they required to be extended. The dastardly and vindictive act of throwing vitriolic acid over the person of another, often attended with loss of sight and shocking disfigurement, worse in the agony of its infliction than the stab or musket-wound, was punishable with no more than two years' imprisonment, to which hard labour could not be added. The convict might have mutilated his unhappy victim, and yet could suffer no more than the privation of personal liberty; supported by the state in a condition that to many would appear comparative happiness — torpor of body and vacancy of mind.

An exaggerated notion of the severity of Lord Ellenborough's statute was impressed on the public mind by the circumstance, that it created ten new capital felonies, with only five days previous notice, before the Act came into operation. Its penal provisions have been since judiciously increased in this particular, that a party convicted of malicious injury to the person may still be punished, though the offence would not have been murder, if death had ensued.

To all amelioration of the criminal code Lord Ellenborough was a steady and active antagonist. We should, indeed, be spoiling the tomb of Sir Samuel Romilly to raise an altar to the Chief Justice, were we not to confess that he carried his dislike of the admirable schemes of a benevolent and learned man to a most injudicious extreme. In 1808 that kind-hearted lawyer commenced his generous attempt of infusing more humanity into the laws of his country, and of weeding from the statute-book some savage and obsolete acts, which had become either charters of impunity, or a dead letter. The spontaneous judgments and feeling of the courts had corrected the law, which punished with death the offence of stealing privately from the person above the value of 12*d.*, and the legislator thought reasonably that it was high time for the

law itself to fix the judgment and feeling of the courts. He proposed to rescind the many cases in which our code had exceeded a spirit of judicious and temperate severity, and for that purpose introduced five bills, two of which were allowed to pass on the petition of bankers and other parties interested in the mitigation of the punishment, that they might be enabled to prosecute without compunction. The bill for repealing so much of the act of Will. III. as related to stealing privately in shops to the value of 5*s.*, as far as it inflicted death, was vigorously opposed by Lord Ellenborough. His remarks will excite the wonder, if not the admiration, of our readers. "I trust your lordships will pause before you assent to a measure pregnant with danger to the security of property, and before you repeal a statute, which has been so long held necessary for public security, and which I am not conscious has produced the smallest injury to the merciful administration of justice. After all that has been stated in favour of this speculative humanity, it must be admitted that the law as it stands is but seldom carried into execution, and yet it ceases not to hold out that terror, which alone will be sufficient to prevent the frequent commission of the offence. It has been urged by persons speculating in modern legislation, that a certainty of punishment is preferable to severity; that it should invariably be proportioned to the magnitude of the crime, thereby forming a known scale of punishments commensurate with the degree of offence. Whatever may be my opinion of the theory of this doctrine, I am convinced of its absurdity in practice.... Retaining the terror, and leaving the execution uncertain, and dependent on circumstances which may aggravate or mitigate the enormity of the crime, does not prove the severity of any criminal law; whereas to remove that salutary dread of punishment would produce injury to the criminal, and break down the barrier which prevents the frequent commission of crime. The learned judges are unanimously agreed that the expediency of justice and the public security require, there should not be a remission of capital punishment in this part of the criminal law. My lords, if we suffer this bill to pass, we shall not know where to stand, we shall not know whether we are on our heads or on our feet.

If you repeal the act which inflicts the penalty of death for stealing to the value of 5*s.* in a shop, you will be called upon next year to repeal a law, which prescribes the penalty of death for stealing 5*s.* in a dwelling-house, there being no person therein; a law, your lordships must know, on the severity of which, and the application of it, stands the security of every poor cottager who goes out to his daily labour. He, my lords, can leave no one behind to watch his little dwelling, and preserve it from the attacks of lawless plunderers; confident in the protection of the laws of the land, he cheerfully pursues his daily labours, trusting that on his return he shall find all his property safe and unmolested. Repeal this law, and see the contrast: no man can trust himself for an hour out of doors, without the most alarming apprehensions that on his return every vestige of his property will be swept away by the hardened robber. My lords, painful as is the duty — anxious as the feelings of a judge are — unwilling as he is to inflict the tremendous penalties of the law, there are cases where mercy and humanity to the few would be injustice and cruelty to the many. There are cases where the law must be applied in all its terrors. *My lords, I think this, above all others, is a law on which so much of the security of mankind depends in its execution, that I should deem myself neglectful of my duty to the public, if I failed to let the law take its course.*" We are startled on ascertaining that such prophecies should have been hazarded, and such sentiments of undue rigour uttered and approved so recently as 1810, within the memory of the present generation.

More than a century before, the impolicy of laws "dabbled in blood" for minor offences had been eloquently denounced.

"Another of our errors established by law, is the taking away men's lives for robbery or theft, which I think is neither warranted by the laws of God, nor by the reason and fitness of things. The law of equity requires, that punishments should be proportioned to the crimes committed. But what proportion is there between the life of a man which when once lost is lost for ever, and a little money, the loss of which may soon be recovered. O cruel justice! I heartily wish that the souls of these poor wretches may not cry to

Heaven for vengeance against us. Sir Thomas More says, in his Utopia, that if under the Mosaic dispensation, which was rigorous enough, theft or robbery was only to be punished with fine or slavery, it can never be supposed that, under the Christian dispensation, which is infinitely more merciful and gracious, men should have a greater liberty to destroy their fellow-creatures."*

These just remarks fell to the ground unheeded at the time, for in their spirit of humanity they had run before the age. The Augustan age, as it is termed, of English literature, the reign of Queen Anne, passed away; the Georgian æra was almost gone before a tender-hearted disciple compelled attention to the doctrine of sound philanthropy, and the good seed took root.

Year by year did the persevering Romilly recur to the charge, and year after year were his proposed emendations rejected, sometimes with indignant remonstrance, but more frequently with silent contempt. The Chief Justice scoffed "at that speculative and modern philosophy which would overturn the laws that a century had proved to be necessary — the illusory opinions of speculatists." "I implore you," he said in one of his latest addresses to the lords, "not to take away the only security the honest and industrious have against the outrages of vice, and the licentiousness of dishonesty. There is a dangerous spirit of innovation abroad on this subject, but against which I ever have been, and always shall be, a steady opposer. I seek no praise, I want no popular applause; all I wish is, that the world may esteem me as a man who will not sacrifice one iota of his duty for the sake of public opinion. My lords, I shall never shrink from the fulfilment of the most arduous task from fear of popular prejudice." Yet with all this declamation against prejudice, the mind of the judge was bitterly prejudiced in favour of a cruel system, whose edicts he defended, yet shuddered at inflicting. "Your lordships," he confessed, "can ill imagine the tortures of a judge's mind on the evening before he quits an assize town. Dreary is the

* Whiston's Memoirs.

pillow on which he rests his head, when he reflects that on the morrow he is to pronounce the doom of a heavy calendar of convicts."

In 1784 Mr. Madan published "Thoughts on Executive Justice," and absurdly insisted on the expediency of rigidly enforcing our penal code, sanguinary as it is. "It certainly was read and followed," says Sir S. Romilly, "to the sacrifice of many lives; and some of the judges adopted his reasoning. Lord Ellenborough, who seems to consider himself as bound to defend the conduct of all judges, whether living or dead, has lately in the House of Lords, in his usual way of unqualified and vehement assertion, declared that it was false that this book had any effect whatever upon either judges or ministers. To this assertion I have only to oppose these plain facts: in 1783, the year before the work was published, there were executed in London only fifty-four malefactors; in 1785, the year after it was published, there were executed ninety-seven, and twenty at a time!

"Lord Lauderdale told me that soon after my pamphlet appeared, in 1810, he had some conversation about it with Ellenborough, who told him, that though the instances were very rare, yet it sometimes became necessary to execute the law against privately stealing in shops, and that he had himself left a man for execution at Worcester for that offence. The man had, he said, when he came to the bar, lolled out his tongue and acted the part of an idiot; that he saw the prisoner was counterfeiting idiocy, and bade him be on his guard; that the man, however, still went on in the same way; whereupon Lord Ellenborough, having put it to the jury to say whether the prisoner was really of weak mind, and they having found that he was not, and having convicted him, left him for execution. Upon which Lord Lauderdale asked the Chief Justice what law there was which punished with death the counterfeiting idiocy in a court of justice; and told him that he thought his story was a stronger illustration of my doctrines than any of the instances which I had mentioned."

So wilfully blind are the wisest men to the defects of a long established and favourite system, that Serjeant Hawkins de-

clared that "those only who took a superficial view of the crown law could charge it with severity," at a time when old women might still be executed for witchcraft; and Lord Ellenborough declaimed against the necessity of amelioration at a period, too recent, when prisoners might be pressed to death for standing mute and refusing to plead — when women might be flogged, to the outrage of female delicacy, and burnt to death in due form of law — when the horrors were not yet abrogated that formed part of the sentence of high treason — when criminals were slain by the capricious fury of the mob in the pillory — when flagrant but merciful violations of their oaths were in constant use among jurymen — when the twelve judges might be called into the open air to try a wager of battle, which time and civilisation had strangely failed to abolish, and the sentence of death was pronounced with all its dread formalities by the reluctant judge, who had no intention of carrying the edict into execution. These and many other enormities are at length, thank God, expunged from the roll of parliament, and blotted out for ever. But the long-continued and ill-advised opposition to Romilly's temperate measures of reform have aroused a spirit of amending the penal laws, equally dangerous with the previous extreme of over-caution and severity. A spirit of spurious compassion seems to be fast pervading the lower branch of the legislature — introducing crude and hasty measures, and lavishing that pity, which was rightly bestowed upon the larcener, on the stealthy incendiary and daring burglar.

"Consider," said a late eloquent writer*, "the popular feelings at this moment against capital punishment. What is it but continuing to burn the woods, when the country actually wants shade and moisture. Year after year men talked of the severity of the penal code, and struggled against it in vain. The feeling became stronger and stronger, and, at last, effected all, and more than all, which it had at first vainly demanded; yet still, from mere habit, it pursues its course, no longer to the restraining of legal cruelty, but to the injury of innocence, and the encouragement of crime, and

* Dr. Arnold's Lectures.

promoting that worse evil, a sympathy with wickedness justly punished, rather than with the law, whether of God or man, unjustly violated."

The contemplated changes of Sir Samuel Romilly in the law of real property were opposed by the Chief Justice with equal vigour. He objected to his scheme of subjecting freehold estates to the payment of simple contract debts, observing that "the bill would be like putting on, for the sake of a little inconvenience, a huge blistering plaster, that might corrode or gangrene the whole system." This righteous measure (through the exertions of Mr. J. Romilly, a son of the originator) has become part of the law of the land, and the gangrene is invisible.

"I had before," says Romilly in his Diary, "sent a copy of the bill to Lord Ellenborough (a bill to make freehold estates' assets to pay simple contract debts), and I last night received a note from him, in which he says 'I cannot help thinking that the simple contract creditor should have his remedy by action against the heir and devisee as well as the specialty creditor;' for, as I have drawn the bill, freehold estates are to be assets for simple contract debts to be administered only in courts of equity. He adds in his note, 'As so very great a change in the law will be effected by the proposed bill if it should pass, I think the judges should have an opportunity of considering it before it is introduced into parliament. If the bill commenced in the lords, as bills of this nature used formerly to do, it would, I believe, be referred to the judges in the first instance, as a matter of course, to report their opinion thereupon; and though the proposed bill originates in the commons, where no such reference can be made, it would still be expedient to obtain their opinion individually respecting the alteration meant to be effected, and to leave the bill in that view for their consideration a reasonable time before it is brought in. In the hurry of term I have not yet had time to attend to it as I ought. The general principle of subjecting real estates to the demands of simple contract creditors I much approve.'"

Though Romilly understood from this note that Lord

Ellenborough wished him to defer his motion, he determined to persevere; excused himself from consulting the judges, as incompatible with his unavoidable occupations, and entertained an objection to the proceeding, which he did not think it necessary to mention. "It appears to me," he adds, "a most unconstitutional doctrine that no important alteration can be made in the law, unless the judges are consulted on it. If they are to be consulted, of course their opinions are to be followed; and therefore if they, or only a majority, disapprove of any proposed alteration in the law it must be abandoned.

The remarks of Lord Ellenborough on the Insolvent Debtors' Bills (mutatis mutandis) are more deserving of attention, especially at a juncture when such a decisive shock to credit is contemplated, as the abolishing altogether the punishment of imprisonment for debt. "The absence of imprisonment," he contended, "would go far to the destruction of trade in this commercial country. There were twenty fraudulent debtors for one vexatious and unmerciful creditor. He trembled at the destruction of all trust in barter, if, after a short confinement, the debtor might be discharged. The man who, tottering on the verge of a gaol, could not with effect place his debtor there, must enter the walls of a prison or a workhouse himself." Though he opposed the recurrence to Insolvent Debtors' Acts to the last, and found his opposition strengthened by the fruits of experience and time, he appears not to have been adverse to some moderate remedial measure; and in 1808 introduced a bill for the relief of persons confined for small debts in certain cases, viz. where the party had been imprisoned in execution for twelve calendar months, and where the debt, exclusive of costs, did not exceed 20*l.*; in such case, upon application to any of the superior courts at Westminster, the party might be discharged, but with a provision that his goods and effects should be liable to execution, in the same manner as if the plaintiff had not taken in execution the body of the defendant. "The bill, if found to be expedient," said its author, "might afterwards be extended; but he would not consent, in the first instance, to run the risk of affecting public credit by extending pro-

visions of this nature too far. As Chief Justice of England, he was sensitively adverse to incautious or intemperate legislation."

When it was suggested to a survivor of Lord Ellenborough's school that a bill for abolishing contingent remainders had been brought into Parliament, he exclaimed, in a transport of legal horror, "Abolish contingent remainders! Why not repeal the law of gravitation!"

CHAPTER IX.

THE LIFE OF LORD ELLENBOROUGH CONCLUDED.

It is to the noble lord as Chief Justice, rather than a legislator, that the friends and admirers of a great man must look for materials of panegyric. They, who would gather just reasons of praise and avoid fit topics of censure, must follow him to the Court of King's Bench, over which he most worthily presided for the term of sixteen years. As judge, Lord Ellenborough never had a superior, scarcely an equal. He took his seat in court on the first day of Hilary Term, 1802, with as majestic a presence as if he had been the king himself at Westminster. His predecessor, Lord Kenyon, was a good plain man and homespun lawyer, of unsullied purity and sound learning. He had sat for years in the same pair of glossy doe-skins, delivering the decisions of the court, which were full of good law, in a sort of pie-bald jargon — a perfect stranger to amenity, dignity, or grace. His successor had been the object of his captious dislike, partly from aversion to his patron, Mr. Justice Buller, and partly from jealousy of his stately bearing. On every occasion he loved to slight the arguments and disparage the legal lore of Sir Edward Law, even when attorney-general. It affords abundant proof of the magnanimity of his mind, that he bore this petulant demeanor without even a look of rebuke, and treated with silent scorn the petty aversion of the Chief. Not that he was insensible to such unworthy treatment. The quotation in which he noticed it, when replying to Erskine, is universally known. The rebuke was conveyed in a classical language, that the inferior auditors might not rejoice at the prospect of a personal skirmish between the grandees of the court:

> " non me tua fervida terrent
> Dicta, ferox, Dii me terrent et Jupiter hostis."

We are informed, in the amusing notice of his contempora-

ries by the late Mr. Espinasse, that the Chief Justice declared, soon after taking his seat, that his feelings as a barrister had been so often outraged by the insults of Lord Kenyon, that no gentleman should be compelled to submit to indignity without the power of repelling or punishing it. Except in rare yet memorable instances, he kept his word.

No deportment could be more signally becoming the chief criminal magistrate of England than was Lord Ellenborough's bearing throughout the trial of Colonel Despard for high treason, which occurred soon after his accession to the bench. His address to the misguided traitor after conviction (Lord Nelson and other gallant brothers in arms having borne witness to the faded glories of the prisoner's former career) softened the stern displeasure of the Judge into accents of grave urbanity and compassion.

"As to you, Colonel Edward Marcus Despard, — born as you were to better hopes, — intended and formed as it should seem by Providence for better ends and purposes, — accustomed as you heretofore have been to better habits of life and manners, — pursuing as you once did, together with the honourable companions of your former life and services (and who have appeared as witnesses to your character during that period), the laudable objects of virtuous and loyal ambition, — I will not at this painful moment point out to you how much all these considerations, and the degraded and ignominious fellowship in which you now stand, enhance the particular guilt of your crime, sharpening and embittering, as I know they must, in the same proportion, the acuteness and pungency of your present sufferings. I entreat you, however, by the memory of what you once were, to excite, revive, and renew in your mind an ardent and unceasing purpose to endeavour, during the short period of your remaining life, to subdue that callous insensibility of heart, of which, in an ill-fated hour, you have boasted, and to regain that salutary and more softened frame and disposition of the heart and affections, which I trust you once had, and which may enable you to work out that salvation which, from the infinite mercy of God, may even yet be attainable by effectual penitence and prevailing prayers."

The general demeanour of Lord Ellenborough to the bar was severe, but dignified and gentlemanly,—not marked by much forbearance, but free from petulance and caprice. Against those indeed who stooped to low or sharp practice, — and in the most liberal profession there must always be found some disreputable practitioners, — he discharged an "iron sleet of arrowy shower" of anger, and indignation, and contempt. Woe betide the unhappy lawyer who ventured before him, tainted with the atmosphere of the Old Bailey, to mis-state a fact, or enlarge the words of an affidavit. He listened with a look of angry endurance, before which the stoutest hearted might have quailed, and gave utterance to his feelings with a terrible brevity: "I had believed that every person with a gown on his back was a gentleman. The rule is discharged." According to the advice of Sir Francis Bacon, he chastised advocates with a heavy hand, "where there appeared cunning counsel, gross neglect, slight information, indiscreet pressing, or an overbold defence."

In the course of his defence of some conspirators, tried before the Chief Justice for a conspiracy to destroy a merchant vessel, and defraud the insurance writers, Mr. Fielding, their counsel, took a legal objection to the form of the indictment, and commenced:—

"I am bound to say here, that there is not an atom of proof that in any one stage of the business ——"

Lord Ellenborough interrupted: — "I rather think, Mr. Fielding, that it is for the jury and me to say whether there is an atom of proof; this is an address upon the facts, instead of an argument upon the point of law." Mr. Fielding, thus rebuked, resumed his argument:—"I take it for granted that I need not waste your Lordship's time by saying, that as to the possibility of the words, *casting away*, bearing upon this case, it would be idle to suppose that this ship was cast away."—"Would it?" said Lord Ellenborough; "I think this vessel was as clearly cast away, as it is possible to use language to express. If a ship which is cast to the bottom of the sea, useless to all purposes whatever, in the situation in which it is, be not cast away, I must have cast away a

good deal of time in using words that are less applicable to it."

The austere rebuke of the majestic Chief Justice to a still more distinguished counsel, Mr. Dallas, when adventuring untenable objections, was, if possible, more pointed. On the trial of Valentine Jones, for a fraud in his office of commissary, the former commissary had a book put into his hand, on the footing of which he had settled his accounts with Mr. Jones, and entries were pointed out not in the hand-writing of the witness. Dallas, the leading counsel for the prisoner, rose to object: "I really must object to reading all that is in this book — it is a book not kept by the witness." Attorney-General: "I am proving that these entries were made in the book, while it was in the West Indies, in order that it may not be suggested they are fabricated ones." Lord Ellenborough: "Can there be any objection to asking a witness, Did you see such a thing in these books at such a time? You could not put three questions if these sort of objections were made. Is that your pocket-book? Yes, it is. What is that to me whether it is his pocket-book? The relevancy is not on the first question but on the connection of the first with the second, and that with the third, which connects the whole." Dallas: "I have no objection to his stating that he saw the whole of that book in the West Indies." Lord Ellenborough: "The present inquiry is merely whether he saw this book in the West Indies with those entries in it." Dallas: "I do not object to that." Lord Ellenborough: "I will be as watchful as I can, that no improper question shall be asked; but if these objections prevail, I should be trying my first cause." Dallas: "I stated it from the suggestion of my friends around me." Lord Ellenborough: "If you think that the objection is maintainable let it be argued. What is the objection to asking the witness whether he saw in the West Indies, in March or April, 1797, a book containing those particular entries, to which he has referred?" Dallas: "In that way the entries are made evidence." Lord Ellenborough: "They are by no means made evidence in that way. You cannot measure your course at once, but must go by steps. It is a step in

the evidence they offer that these entries were existing at a particular period: if a clear argument, I do not say a solid argument, but if a clear argument can be offered to show that this is not admissible, let me hear it."

With similar severity, when Mr. Alley, counsel for the prosecution against a party accused of libel, was entering into a view of the French Revolution, and of the rise of Buonaparte, Lord Ellenborough interposed, Quid ad rem? "Has what you are saying any bearing on the subject?" Mr. Alley cut short his rhetoric with an apology; his drift was that Buonaparte owed his elevation more to the press than to the sword.

His deportment at the trial of the elder Watson for high treason was equally severe. One of the counsel, Mr. (now Sir Charles) Wetherell, had hurled the informer with infamy from the Court, and termed him "a bawdy-house bully." Lord Ellenborough took instant umbrage at the phrase, and said, that terms so peculiarly coarse might perhaps have been spared out of regard to the decorum of the Court. When the same intractable counsel used a gesticulation, holding up his hands in surprise, the Judge animadverted strongly on so improper a mode of conducting a case, and said that they (his colleagues and himself) must take severe notice of it, were there a repetition of the offence. "It has been pressed on the Court," he said, in deciding some objection, "that we are violating the first principles of law, when no case has been referred to, wherein such a principle has been entertained. This mode of arguing the case, and of addressing the Court, is excessively improper." His interruptions of counsel would sometimes assume a more jocular form. When Mr. Park (the late Justice Allan Park) had been moved, in some case that appealed to the feelings, to repeated exclamations, and had called Heaven to witness and so forth, while addressing the jury—"Pray, Sir," said my Lord, "pray, don't swear in that way here in court!" The effect of this interruption, in a grave tone, was irresistible, and Mr. Park heartily joined in laughing at this unexpected practical pleasantry. When another counsel, too much addicted to self-praise, had declared, in the course of his ad-

dress, that such things were enough to drive one from the profession of the law — "Don't threaten the Court," said his Lordship, "with such a terrible calamity." The austere lectures which he sometimes read flippant pedantry or hopeless imbecility, are often remembered and quoted with malicious glee, for they possess a character of quaint and grave sarcasm peculiar to the man. An eminent conveyancer, who prided himself on having answered thirty thousand cases, came express from the Court of Chancery to the King's Bench to argue a question of real property. Taking for granted, rather too rashly, that common lawyers are little more acquainted with the Digest of Cruise than with the laws of China, he commenced his erudite harangue by observing, "that an estate in fee-simple was the highest estate known to the law of England." "Stay, stay," interrupted the Chief Justice, with consummate gravity, "let me write that down." He wrote, and read, slowly and deliberately, the note which he had taken of this A. B. C. axiom, — "An estate in fee-simple is the highest estate known to the law of England. The Court, Sir, is indebted to you for the information." There was only one person present who did not perceive the irony, and that was the learned counsel who incurred it. But though impervious to irony, it was impossible even for his self-love to avoid understanding the home-thrust lunged by the Judge at the conclusion of his harangue. He had exhausted the year books, and all the mysteries of real-property law, in a sleepy oration which effectually cleared the Court; insensible alike to the grim repose of the Bench and the yawning impatience of the ushers, when, at the close of some parenthetical and apparently interminable sentences, the clock struck four, and the Judges started to their feet. He appealed to know when it would be their *pleasure* to hear the remainder of his argument. "Mr. P.," rejoined the chief, "we are bound to hear you, and shall do so on Friday; but *pleasure* has been long out of the question."* The

* Lord North may be considered the original author of this joke. After his resignation, upon reading the appointments of his successors in the Gazette, he complained of the new administration commencing office with a notorious falsehood. "It has *pleased* his Majesty to appoint," whereas in truth his Majesty had not the least *pleasure* in the world in appointing them!

hesitations of dulness and vagaries of fancy received from him no quarter. A young counsel commenced his stammering speech with the remark, "The unfortunate client who appears by me," and then came to a full stop; beginning again, after an embarrassed pause, with a repetition of the remark, "My unfortunate client," he did not find his fluency of speech quickened by the calm raillery of the judge, who interposed in his softest tone, "Pray go on,—so far the Court is quite with you." The late Sir James Mackintosh, who used to chuckle over the narration of this incident, would, however, sigh at the remembrance of its cruelty, and cruel it undoubtedly was. Another barrister was advancing rapidly into the regions of poetry in a grave argument at banc, and observing, "It is written in the large volume of nature," when the judge instantly recalled his wandering imagination by the caustic query, "In what page, pray?" When a favourite special pleader, Mr. Gaselee, was making an excursion, somewhat unexpected by his hearers as unwonted in him, into a pathetic topic, "Are we not, sir, rather getting now into the high sentimental latitudes?" The barn-door flight of the English special pleader was far inferior in sublimity to that of an Irish counsellor, who thought proper to suppose "an eagle soaring high above the mists of earth, winning its daring flight against a mid-day sun, till the contemplation becomes too dazzling for humanity, and mortal eyes gaze after it in vain;" here the orator faltered, and, after an abortive effort or two, sat down in confusion. "The next time, sir," said the judge, "you bring an eagle into Court, I should recommend you to clip his wings." This habit of making strictures on counsel, barbed as they were with mortal pleasantry to them, did occasionally degenerate into unjust harshness, and met in one instance with a remarkable rebuke. Mr. Brougham having defended the proprietors of a paper who were indicted for libel, and made an impassioned address to the jury in their behalf, Lord Ellenborough, in summing up, remarked, that the defendant's counsel had imbibed the noxious spirit of his client, and had inoculated himself with all the poison and virus of the libel. Mr. Brougham, when his client was brought up for judg-

ment, complained with proper spirit of these animadversions. "My lord, why am I thus identified with the interests of my client? I appear here as an English advocate, with the privileges and the responsibilities of that office, and no man shall call in question my principles in its faithful and honest discharge. It is not, assuredly, to those only who clamour out their faith from high places, that credit will be given for the sincerity of their professions." The judge made no comment on this manly remonstrance, but was too high-minded himself not to admire its spirit.

The remarks of Sir S. Romilly upon this outbreak of temper, though severe, are just. "Lord Ellenborough on Hunt's trial was more than usually impatient and caustic: he declared that Brougham was culpable, and told the jury the issue they had to try was whether we were to live for the future under the dominion of libellers. The Hunts were convicted. The jury retired for about ten minutes. There is but one sentiment of condemnation respecting Ellenborough's intemperate and indecent conduct, universal among the bar, who feel this as a professional concern."

When counsel, familiarised to the character and temper of their chief, trained in habits of observance, and schooled in discipline, were thus occasionally torn and shaken, it cannot excite surprise that attorneys, defendants, and witnesses in the sittings at Nisi Prius, should feel the weight of the lion's paw, especially if they attempted, or appeared to attempt, imposition. An attorney, convicted of some chicane, was glad to escape from Court, with the record flung forcibly at his head.

Wooler, on his trial for publishing the "Black Dwarf," defended himself with much rant, saying, "I would rather be the martyr of legitimacy than its slave! The Attorney-General is at liberty to exchange, if he pleases, his brief for a dagger, and to write my epitaph in my blood upon my tomb!" At the close of his showing cause against a rule for a new trial, occurred the following short and dramatic dialogue. Lord Ellenborough: "Have you done?" Mr. Wooler: "At present!" Lord Ellenborough: "For ever! let the prisoner be remanded."

A quaker not wearing the peculiar dress of his sect, says Espinasse in his amusing Ana, came once to be examined as a witness before the Chief Justice at Guildhall. The crier put the book into his hand, and was about to administer the oath, but he refused to be sworn, and required to be examined on his affirmation. Lord Ellenborough inquired if he was a quaker. He answered in the affirmative. "Do you mean," said his lordship, "to impose on the Court by appearing here in the disguise of a reasonable being?" At a later period, in an action for breach of promise of marriage, a book-keeper of the defendant was sworn to give evidence to the handwriting of the letters, and prevaricated on his knowledge of the hand, whereupon ensued the following characteristic dialogue:—

"*Q.* If you received that letter, would you act upon it as if it were the defendant's writing? *A.* I believe not.—*Q.* Answer me promptly, sir! A witness who hesitates as you have done only implicates his own character. *A.* My Lord, I hope my character is well known in London; but Mr. Flower used to write different hands; he was often unwell; he used to write short-hand; he was shy of letting me see him write.—*Q.* What, sir, in his ordinary business did he use short-hand? You must see the improbability — the gross improbability — of your testimony where you attempt a fact, and its prevarication where you hazard a conjecture. Pray, sir, in what capacity were you connected with Mr. Flower? *A.* I was his book-keeper.—*Q.* His book-keeper, and not have the faintest recollection of his hand. Go down from that box, sir, you have told us enough. Go along, you may read your history in the eyes of the gentlemen around you!"

This high tone of moral feeling, which hurled from his presence all attempts at fraud and prevarication, gave the most vivid colouring to his eloquent charges to juries in those cases which came home to the business and bosoms of men, or where any breach of public decorum, or violation of private morals, was made manifest. The defendant, who had sinned against the laws of God and man, found the most stirring efforts of his counsel annihilated by the vehement denunciations of the judge. A Methodist preacher had broken

his troth, after writing some canting letters, which were read in Court, of his love in the flesh. Lord Ellenborough inveighed against the disgusting mixture of lasciviousness and fanaticism which his correspondence disclosed, tending to degrade Christianity by mingling its high and sacred names with the meanness and abomination of the lowest earthly impurity, and compelled the jury to give the full amount of damages laid in the declaration. The "words that burn" fell from his lips, and vindicated the cause of public morals. An issue was brought before him from the Court of Chancery to try the validity of a marriage. The father, who had consented to and permitted the marriage, a few months afterwards sought to set it aside, on the ground that his daughter was not of competent mind at the time of its solemnisation. The girl herself was no party to the suit, and when examined bore no marks of insanity. The Chief Justice commented on the improbability of her being insane, as there were not any vestiges of her disorder discernible in the countenance. "Madness left its deep impression there — there was the wandering of the eyes — the paleness — the wild and melancholy look, even when the mind had shaken off the weight of its last and direst calamity. There could be no feeling for the defendant: his case was as heavy with guilt, and as black as ever came before the Court. He had but an election of crimes. He had entered into a foul and infamous conspiracy with the aunt to do an act, which drew down the heaviest vengeance of the insulted laws — to violate the order which commands that marriage should not be contracted where this dreadful disease stood to prohibit its celebration; or he was guilty of the still more foul and infamous crime of conspiring, with that woman, to break down a lawful marriage — to tear a wife from her husband — to make her marriage an illegitimate rite, and proclaim her children, his grand-children, bastards before the world. He defied the genius of man to find out any other than the miserable option of one of these deep offences against feeling, against society, against law, and against religion." The jury found the unfortunate young woman thus conspired against to be of sound mind.

There was another action, Lorraine against Francis, for poisoning some fowls, the property of the plaintiff. The fowls were in the habit of straying from a common into the field of defendant. He steeped some barley and wheat in an infusion of nux vomica, which killed them. Lord Ellenborough, in summing up, expressed his indignation in terms of great force and feeling. He said, "Man by the laws of God had dominion over the inferior animals of creation, but it was to be exercised in mercy; and he had no right to put them to death with torture, or to revenge a quarrel with a man their proprietor. The defendant had equally violated the law of the land, the law of morality and of social duty. But the jury, however indignant they might feel, must restrain their damages within legal bounds: they must give the value of the fowls, but beyond that amount they ought not to suffer themselves to be transported." The damages were of course only 40*s.*; for though Lord Ellenborough was indignant he was also just.

There is no case in which he more resolutely incurred public odium, in obedience to his ideas of sturdy uprightness, than in the trial of Lord Cochrane with De Berenger and others, for a conspiracy and fraud. In this one instance it admits of doubt, whether his horror at the mean vice alleged on the record might not harden him unconsciously against the accused; whether he did not commit a rigour which verged on injustice, from his very determination to be just. Many will remember the breathless interest which pervaded the crowded Guildhall in June, 1814, when Lord Cochrane and his accomplices were put on their trial for conspiracy to raise the price of the funds. The chief proofs against him were the facts of De Berenger, who had spread the false intelligence of Buonaparte's death, being traced all the way from the coast to the house of Lord Cochrane, where he changed his dress; and of that nobleman's having sold out immediately, realising a profit of 2470*l.* The evidence would probably not have been sufficient to insure a conviction, but for the forcible manner in which it was put and illustrated by the learned judge. "What business," he said, "had this man with a red aide-de-camp's uniform? he had

no business to wear any such garb; he was almost as much out of his proper character, as I should be, if I appeared habited in the particular dress and professional habits of an officer or a clergyman. On seeing him habited, as all the witnesses describe him to have been, would not any man, who had known him before, have immediately exclaimed, 'Where have you been? and what mischief have you been doing in this masquerading dress? Why do you appear in the habit of a mountebank rather than in the proper uniform of a sharpshooter?' It is the conduct of an accomplice to assist him in getting rid of his diguise; to let a man pull off at his house the dress in which he had been committing the offence, viz. the star and red coat, and appendant order of masonry, seems wholly inconsistent with the conduct of an innocent and honest man; for if he appeared in such a habit, he must have appeared to any rational person fully blazoned in the costume of that or some other crime, which was to be effected under an assumed dress, and by means of fraud and imposition."

All the defendants were found guilty, and received sentences of peculiar severity. Lord Cochrane was sentenced to pay a fine of 1000*l.* to the King, to suffer twelve months imprisonment, and, what must to him have appeared the climax of infamy, to stand for one hour in the pillory in the midst of the city of Westminster, which he at that time represented in parliament. The last part of the sentence, more terrible than the penalty of death to an officer of Lord Cochrane's reputation, ought certainly to have been spared, from regard to the proud services which he had wrought his country in a long and brave career; and perhaps even in deference to his station, as a nobleman and member of the House of Commons. Upon the debates which ensued, the leaders of the opposition vied with each other in giving notice of motions to address the King, that he would be pleased to remit this portion of the punishment, and ministers anticipated their prayer, in compliance with the general feeling. The house of Lord Ellenborough was attacked, and his person insulted, but he remained steadfast, and refused to join in the recommendation to mercy. He denied in private, most indig-

nantly, the imputation sedulously cast upon him, that he had wreaked a party vengeance on a political enemy. None who knew the magnanimous temper of the man can fail to admit, that the austerity of the sentence originated in his sense of the magnitude of the crime of unfairly gambling with the funds, in which the property of thousands is invested — in the wish to make a signal example, and in his desire to execute just judgment on the rich as well as on the lowly; forgetting that our artificial state of society renders the infamous punishment, which is the same in kind, most unequal in degree. In the following year the punishment of the pillory, notwithstanding the remonstrances of the Chief Justice, who proved its existence so far back as 1269, was abolished altogether.

"He declared that he certainly had no particular attachment to this method of punishment, but thought the punishment ought not to be abolished altogether, without substituting some other in its place. There were several offences to which it was more applicable than any other. It was applied as far back as the thirteenth century to perjury and fraud, and some others. Since the reign of George the First, the punishment had been inflicted in three cases for one in which it was now. The practice was milder at present from an attention to some peculiarities in the times."

Immediately on his release from prison, Lord Cochrane, who had been re-elected for Westminster, resumed his seat, and laid on the table of the House thirteen articles of charge — of partiality, misrepresentation, injustice, and oppression, against the Lord Chief Justice. The charges, in advancing which he ransacked the English language for terms of vituperation, were so intemperate and groundless, that his vote of censure dropped to the ground.

On the question of referring them to a committee, the House divided.

Tellers for the Yeas,

Sir Francis Burdett,
Lord Cochrane, } None.

For the Noes,

Lord Binning,
Mr. Wrottesley, } 89.

It seems particular, says Mr. Hatsell, that Lord Cochrane should have attended and voted in a case arising out of his own complaint of an injury done to himself.* Immediately after the division, Mr. Ponsonby, the leader of the opposition, moved, amidst the all but unanimous acclamation of the House, that every notice of it should be expunged from the Journals.

Undaunted by his failure, Lord Cochrane soon after published a remarkable letter to the Chief Justice, with the motto, "No pleasure is comparable to the standing upon the vantage ground of truth," laden and weighed down with complaints of the Judge's deportment on his trial, but which places in bolder relief than the printed report the Judge's prominent merits and defects. "The identity of De Beranger was proved; but when a witness was asked whether he had not previously described the person as one that had a great red nose (his countenance being pale), it was, I apprehend, no part of your Lordship's duty to exclaim, 'Red or not, sure you are of the identity of the face?'"—"In the alibi wickedly set up, that De Beranger was engaged in measuring a garden in York Street, Westminster, the day before the fraud, the question put by your Lordship, whether or not he stood ankle-deep in snow, was not merely wholly unnecessary, but extremely improper, as there was not on the 20th of February any snow on the ground." Lord Ellenborough having, in the course of his summing up, remarked on a pointed observation of the counsel for the prosecution, the angry defendant exclaims, "It is singular that your Lordship found no opportunity of quoting any pointed observation from the speech of Mr. Serjeant Best, the counsel who conducted the defence. It is true that your Lordship called for the defence at a time when much point was not to be expected from that learned gentleman. I do think," he adds, "that I have a right to complain that there does not occur, in the whole course of your Lordship's charge, even the shadow of a suggestion in my favour."

The unlucky scribe waxes merry in the recital of his wrongs, and assails Mr. Gurney (the late Baron), "who conducted the prosecution with a ferocity worthy of his employers.

* Hatsell's Precedents.

His perception was so acute, that he is deserving of no less praise than that discerning personage who distinguished in a pipe of wine an iron kind of taste from a nail at the bottom of it."

After this sally, Lord Cochrane inveighs against the judge denying to the counsel for the defendant, when exhausted with the attendance and fatigue of fifteen hours, a short respite for repose and preparation. It was hardly possible to expect either argument or eloquence from the counsel, or attention from the jury. In his petition, Lord Cochrane said, "The speech of the counsel being ended, the Judge, at three in the morning, adjourned the court till ten, thus separating the evidence from the argument, and reserving his own strength, and the strength of my adversary's advocate, to the close, giving to both the great advantage of time to consider of the reply, and to arrange arguments to meet them, which had been urged in my defence."

This is certainly the gravamen of the charge, allowing the trial to proceed till three o'clock in the morning, and compelling the counsel for the defendants, Serjeant Best, Mr. Park, and others, to make their speeches before the adjournment. It may be, however, the interest of the defendant, as all intelligent men, whether lawyers or not, must at once acknowledge, to have the last word, and for his advantage that the jury should retire for the night with the favourable topics yet ringing in their ears.

In Lord Cochrane's case, indeed, it was for him most unlucky. One of the ablest tacticians that ever practised at the bar has always attributed his conviction to the refusal of an adjournment, which would probably have enabled his counsel to foresee, and avoid the fatal error of contradicting instead of explaining the facts which bore most strongly against him.*

There may be some truth in the charge, that the judge, feeling strongly the truth of the allegations, strained some portion of the evidence unwittingly against the defendants:

"Huic uni forsan potuit succumbere culpæ;"

but to suppose that he wilfully perverted and anxiously

* Lord Brougham asserts that he must have been acquitted if he would have given up the real culprit, his relative.

pressed the case against them from corrupt motives, is disgraceful only to those who indulge it — a wild and mischievous delusion.

The spotless integrity of Lord Ellenborough was called in question in the House of Commons on another occasion, which extorted from the lips of the insulted judge a disclaimer so abrupt, as to have passed into a proverb. The stubborn but thoroughly English mind of Whitbread, who brought forward the charge, had been duped by perjured testimony to believe that the venerable Chief Justice and his brother commissioners, Lords Erskine, Grenville, and Spencer, when appointed, in 1805, to scrutinise the conduct of the Princess of Wales, had tampered with the evidence. In March, 1813, Lord Ellenborough rose in his place to complain of the slanderous imputation. "It has been said that, after the testimony had been taken in a case where the most important interests were involved, the persons entrusted had thought fit to fabricate an unauthorised document purporting to relate what was not given, and to suppress what was given in evidence. My Lords, I assert *the accusation is false as hell* in every part. What is there, let me ask, in the transactions of my past life; what is there in the general complexion of my conduct, since the commencement of my public career, that should induce any man to venture on an assertion so audacious? .... Folly, my lords, has said (alluding to Whitbread) that in examining the witnesses we put leading questions. To say that the judge on the bench may not put what questions and in what form he pleases, can only originate in folly..... Folly says again that the testimony of the witness should have been recorded in question and answer. Will the most grey-headed judicial character in the country show a solitary example of the kind? Such accusations are the offspring of a happy union of dulness and stupidity, aided by the most consummate impudence that was ever displayed."

The virulence of Lord Ellenborough's vindication in the preceding paragraphs will find a ready excuse with those who consider the grossness of the imputation; and though we desiderate a spirit of courtesy, and may not admit with his apologists that he was merely quoting Shakspeare, when

he used the phrase in italics (he was no more thinking of Shakspeare than of the Bible), we remember the office he filled, and how he filled it, and cannot much blame him.

A character of integrity is, thank Heaven, cheap praise, when applied to an English judge. The time has long since passed when a Jeffries could accept bribes in a court of justice, or a Parker connive at peculation on the bench. But the love of court favour, the leaning to friends and brother magistrates, the yearning for popular applause, or the terror of the press, may, even in our own day, sometimes be fancied sufficient inducements to warp the decisions, and taint the purity of the bench. To such preponderating influences, whether of fear or favour, the Chief Justice opposed a steady front: undazzled by the splendours of the crown, and unawed by the menaces of the people, he stood erect in his integrity even in cases where he might have partially yielded, without exciting comment. It fell to his lot on two several occasions to have the conduct of brother judges arraigned before him, and not even the spirit of detraction could detect a bias.

The first was an action brought by an attorney of the name of Beaurain against Sir William Scott, Judge of the Consistorial Court, for having excommunicated the plaintiff without having cited him, because he had refused to become guardian *ad litem* for his son, when assigned by the court. It was proved in evidence, that Sir William Scott had given the plaintiff 150*l.*, as his counsel said, from motives of pure benevolence, but which the other side insisted on as proof that he knew his judgment to be erroneous. Lord Ellenborough did not agree either with the counsel for the plaintiff or the defendant; he did not think with the last that the money was given from a consciousness of error, nor with the latter that it was an act of voluntary charity. "No, it was an infirmity in a great man, whose character was about to be questioned, and who did not wish to have his conduct drawn into question, and his name bandied about in all the public papers. He was aware of the obnoxiousness of that mode of sentence of excommunication, unfortunately the only method of enforcing the sentences of that court, and which, it was much to be wished, should be changed for some other. He

thought that if by relieving the plaintiff, who was distressed, he could put the question to rest, it would be a fair way to get rid of it; but it was a lamentable lesson for all men to stand boldly forward — to stand on their characters, and not by compromising a present difficulty to accumulate imputations on their characters. The defendant, by giving 100*l.* to take the plaintiff out of prison, by giving 50*l.* to launch him in the world, gave the plaintiff ground of extortion. It was even stated that some of the defendant's excellent relations were to give the plaintiff such situations as those of a Master in Chancery, but this was not in evidence, but he had demanded the place of marshal of the Admiralty, not an *unemolumentary* place. It was an infirmity of one of the most learned men of his time, and would act as a warning to take a fair and firm ground, and arm himself as a man to receive any charges that might be made against his character."

The verdict of the jury was in strict keeping with this conscientious and impartial summing up. They gave the plaintiff 40*s.* damages, for his costs were all that he could fairly claim, and gave in a written declaration through their foreman which must have greatly soothed the wounded feelings of the defendant. "The jury beg leave to assure the Lord Chief Justice, that by this their verdict they do not mean to attach the slightest impeachment on the most respectable character of Sir William Scott."

The other ermined defendant, whose trial evinced with what admirable indifferency Lord Ellenborough administered equal justice, was Mr. Justice Johnson, one of the Puisne Judges of the Court of Common Pleas in Ireland, who had published a libel against the Lord Lieutenant. He had chosen to define Lord Hardwicke as a man only fit to be a feeder of sheep, adding, in a vein of pedantic drollery, that his head was made up of particles of a ligneous tendency, hollow as the Trojan horse, but that its hollowness would soon be filled with instruments of mischief. Lord Ellenborough, whilst he lamented the utter destruction of character which this verdict would inevitably entail, charged the jury to do their duty; and the lampooning functionary being con-

victed under his directions, retired from the bench on a pension for life.

The same honest inflexibility of purpose, which would not brook suspicion, marked the conduct of the Chief Justice in the trial of a horse cause, to which a certain privy councillor was party. The right honourable baronet took his seat as of right on the bench, and ventured in the course of the trial to whisper a remark to his lordship. "If you again address me, Sir William," was the grave rebuke, not delivered in a whisper, "I shall [illegible] you in custody of the marshal." The spirit of the man of rank died within him before the stern voice of the judicial dictator, and he shortly stole away from the side cushions of the bench. The instant submission paid by all ranks to the authority of a chief who ruled the court and its precincts with despotic sway, "cuncta supercilio moventis," is said to have been once exhibited in a very ludicrous manner. A storm of wind and rain had driven a regiment of Westminster volunteers to seek for shelter in the hall, when his attention was attracted by the clatter of the musketry. "What is the cause of that interruption, usher," vehemently demanded Lord Ellenborough. "My *Lud*, it is a volunteer regiment *exorcising*, your *Ludship*."—"Exorcising! we will see who is best at that. Go, sir, and inform the regiment, that if it depart not instantly I shall commit it to the custody of the tipstaff." The battalion filed off, we are assured, at the first report, with unmilitary speed.

The dry and caustic humour which flashed occasionally from the stern lawyer, as if in parenthesis, for no smiles of his own accompanied and approved the jest, is traditionally remembered in some detached and not unamusing instances. It is related of him, when attorney-general, that he had been listening with some impatience to the judgment of a learned judge, afterwards his colleague, who said, "In —— v. —— I ruled so and so." "You ruled," muttered the attorney-general in a tone of suppressed displeasure, "you rule, indeed! —you were never fit to rule any thing but a copy-book." Soon after the death of Lord Kenyon, who was remarkable for his parsimony, it was mentioned in chance conversation to Ellenborough, that on his hatchment there was inscribed

by some mistake, doubtless of the painter, "Mors janua vito" instead of "vitæ." "No, sir," he replied roughly, "there is no mistake; it was by particular directions of the deceased—it saved the expense of a diphthong!"

Another hostile peer, Earl Darnley, felt the venom of his wit in the House of Lords, where he had been making a wearisome oration on a never-ending theme, the wrongs of Ireland. He had excited a contagious drowsiness in the House, which extended to himself, and was stopped in the midst of a parenthetical sentence by the necessity of making a hearty yawn. "There's some sense in that, however," growled the impatient judge, with a derisive gravity, whose influence not even the bench of bishops could resist.

Lord Ellenborough jumped up during another prolix speech, and exclaimed to those around him, with that quaint and dry humour which rarely suffered his own muscles to relax. "I am answerable to God for my time; and what account can I give on the day of judgment, if I stay here any longer?"

At a Cabinet Council of the Talents, when a noble lord's death was mentioned, who had the reputation of being very parsimonious—"Die!" said Lord Ellenborough—"Die! Why should he die? What would he get by that!"

His interrogative exclamation in Lord Melville's case, when the party's ignorance of having taken accommodation out of the public funds was alleged, may be remembered as very picturesque, though perhaps more pungent than dignified. "Not know money? Did he see it when it glittered? Did he hear it when it chinked?" On the bench he had the very well-known, but not very eloquent, Henry Hunt before him, who, in mitigation of an expected sentence, spoke of some that complained of his dangerous eloquence. "They do you great injustice, sir," said the mild Chief Justice.

But in recounting a few of the detached pleasantries which tradition ascribes to Lord Ellenborough, we are wandering unconsciously beyond the precincts of the court, and must return to the consideration of his character as an independent, constitutional, upright, and able judge.

Before that most valuable body of men, the country gentlemen, ungraciously yclept the great unpaid, to which more than perhaps any class England owes a large debt of gratitude, he was ever wont to throw the broad ægis of the law. But the just protection which the law affords them in the exercise of their arduous and unsalaried services, was never wrested by the upright chief magistrate into a shield of injustice, or a shelter for oppression. Some magistrate of Middlesex had sent a young man on board a tender, which lay off the Nore to receive impressed men, for the heinous crimes of sitting in his cart on the high road, and of insolence when summoned before them, the legal penalty for the first offence being a fine of ten shillings. He was kept on board the prison-ship seven days, and brought his action for false imprisonment. Lord Ellenborough summed up strongly in favour of exemplary damages. "This is a case that calls for ample justice. A young man, in driving his cart, commits an offence for which he is finable, instead of which he is imprisoned without any authority of law, and afterwards put on board a prison-ship; there is nothing a magistrate ought to guard so much against as playing with the liberty of the subject. There can be no excuse for the conduct of the defendant. The plaintiff is entitled to ample justice from a jury of his country; you will, therefore, gentlemen, take the case into consideration, and give him those damages that you think will make him ample compensation for the injuries he has sustained." The jury very properly awarded 500*l.*

The country gentlemen did not meet with more accommodation at the hands of the uncompromising Chief Justice, when they would fain have wrested the law to an acquiescence in their wants and wishes. There was an action brought by the Earl of Essex against the Honourable and Reverend Mr. Capel, that the defendant had committed a trespass, in breaking and entering his grounds, called Cashiobury Park, and with horses and hounds destroying the grass and herbage, and breaking down his fences. The defendant justified, that the fox being a noxious animal, and liable to do

mischief, he, for the purpose of killing and destroying him, and, as the most effectual means of doing so, broke and entered the park with hounds and horses, and hunted the fox. Replication, that his object was not to destroy the fox, but the amusement and diversion afforded by the chase. After two witnesses had been examined to facts, Lord Ellenborough interrupted the further progress of the cause: "It was a contending against all nature and conviction. Could it be supposed that gentlemen hunted for the purpose of killing vermin and not for their diversion? Could the jury be desired to say upon their oaths that the defendant was actuated by any other motive than a desire to enjoy the pleasures of the chase? The defendant said that he had not committed the trespass for the sake of the diversion of the chase, but as the only effectual way of killing and destroying the fox. Now could any man of common sense hesitate in saying that the principal motive was not the killing vermin, but the sport? It was a sport the law of the land would not justify, and there should not be a new law of the land accommodated to the pleasures and amusements of these gentlemen. They might destroy such noxious animals as were injurious to the commonwealth, but the good of the public must be the governing motive." Neither did the judge show more deference to a barbarous sport formerly in great favour with country squires, but which the increased refinement of modern manners has tended to discourage—the sport of cock-fighting. He refused to try an action for money had and received for a wager on a cock-fight. (Squires *v.* Whisken, 3 Camp. 140.) "This must be considered a barbarous diversion, which ought not to be encouraged or sanctioned in a court of justice. I believe that cruelty to these animals in throwing at them forms part of the dehortatory charge of judges to grand juries, and it makes little difference whether they are lacerated by sticks and stones, or by the bills of each other. There is likewise another principle on which I think an action on such wagers cannot be maintained. They tend to the degradation of courts of justice. It is impossible to be engaged in ludicrous inquiries of this sort consistently with that dignity which it is essential to the public welfare that a court of

justice should always preserve. I will not try the plaintiff's right to recover the four guineas."*

The same circumspect jealousy, with which this highly constitutional judge guarded the liberty of the subject against the aggressions of inferior magistrates, was vigilantly maintained by him over his own jurisdiction. Mr. Espinasse mentions that he remembers an application being made to the Court to dispense, under very peculiar circumstances, with the immediate return to a writ of habeas corpus; and with what emphasis of expression the judge pronounced his refusal, saying, "I dare not do it!" Yet dared he all that might become a judge; for never since the days of his firm predecessor, who committed a refractory heir-apparent to prison, had there presided over the Court a more dauntless spirit, prepared to defend alike the rights of the subject, and the prerogative of the crown, against the arts of the libeller, and the menaces of the demagogue. He gave a striking instance of this constitutional boldness in a debate in the House of Lords. "A noble lord" (Alvanley) he said, "had recourse to an act of parliament to legitimate general warrants. Perhaps he himself had a firmer nerve, but for his own part he could conceive nothing more injurious to the prerogatives of the crown, and therefore to the interests of the people, for whose benefit they were intended — nothing more productive of feebleness in the execution of the law, than declaring this and that to be legal of which there had been no doubt. What he would do was this — he would avow the precedent of office, and state that he had only done what had been considered legal, and if it were found mischievous, let it be discontinued. But he would not shelter himself under an act of parliament, which tended to make little of the prerogatives of the crown."†

* In Pope v. St. Leger, 1 Salk. 344., an action was tried before Lord Holt on a wager whether a person playing at backgammon, having stirred one of his men without moving it from the point, was bound to play it, and that venerable judge called in the assistance of the groom porter to decide the controversy. Lord Ellenborough preferred the authority of good sense to even the authority of this able lawyer. Lord Tenterden, on the same principle, refused to try a case involving a question as to the prowess of the celebrated dog Billy.

† Parliamentary Debates, vol. xiv.

When Sir Francis Burdett brought his action of trespass against Abbott, the Speaker of the House of Commons, for breaking into his house, and forcing him to the Tower, and detaining him prisoner there, Lord Ellenborough stoutly maintained the rights and immunities of the lower branch of the legislature. "They must have the right of self-protection; I do not mean merely against acts of individual wrong; for poor and impotent indeed would be the privileges of Parliament, if they could not also protect themselves against injuries and affronts offered to the aggregate body, which might prevent or impede the full and effectual discharge of their parliamentary functions. This is an essential right, necessarily inherent in the Supreme Legislature of the kingdom. Can the High Courts of Parliament, or either of the two Houses of which it consists, be deemed not to possess intrinsically that authority of punishing summarily for contempts, which is acknowledged to belong, and is exercised daily as belonging to every superior court of law, of less dignity, undoubtedly, than itself? And is not the degradation and disparagement of the two Houses of Parliament in the estimation of the public, by contemptuous libels, as much an impediment to their efficient acting, with regard to the public, as the actual obstruction of an individual member by bodily force in his endeavour to resort to the place where Parliament is holden? And would it consist with the dignity of such bodies, or, what is more, with the immediate and effectual exercise of their important functions, that they should wait the comparatively tardy result of a prosecution in the ordinary courts of law for the vindication of their privileges from wrong and insult?"

The hunt of obloquy pursued him in full cry to the death for his eloquent resistance on this and other constitutional questions to the mischievous efforts of faction. Cobbett and Finnerty, and a whole herd of libellers, exhausted on his person the rancour, if not the power, with which Junius reviled Lord Mansfield, and denounced the steadfast judge in all the party pamphlets of the day, for the unsparing justice which he dealt out to the coiners and utterers of blasphemous, and seditious, and private, slander. It would be tampering with the truth to deny that the peculiar features of the man

—his iron inflexibility, his stubborn rectitude, and unsparing determination—are graven deeply on the history of these trials; but it would be also cruel injustice to the character of that upright magistrate to conceal the enormity of the offences which were in general brought before him; to thrust on the administration of justice, and not on the legislature, the faults which confessedly attached to the law of libel. The reader of a single case, who censures the Court for this merciless rigour, should make himself acquainted with the daring height to which the party-writer had ventured to soar, and the quarry he attacked — sparing neither the sanctity of sex nor the recesses of private life — before he pronounces condemnation. At no era does the licentiousness of the press appear to have swept away all bounds more completely than during the period of the noble lord's judicial career, especially about the year 1810. The injurious disclosures affecting the moral character of the Duke of York, and the melancholy discomfiture of our arms in the swamps of Walcheren, had produced a hectic fever in the public mind, which the editors of several journals sought to stimulate to madness. "The press is shown to have been employed day by day in bringing before the public the accumulated and expanded details of the supposed imperfections of the great; in developing hints, and generalising suspicions; in gratifying a perverted curiosity by fictitious or grossly exaggerated criminalities, and circulating the history of guilt imputed to the higher classes, through every department of the nation, with the most incredible rapidity and the most indefatigable zeal."* Against this dictatorship of the journals, Lord Ellenborough offered a stern, strong, and enduring opposition. "Is it to be tolerated," he exclaimed, striking the bench with his hand, "that a journalist should erect his tribunal, and that he should summon whom he pleases before his spurious jurisdiction, while the laws of the land are in full operation? I declare, that sooner than submit to be catechised in this way, I would rather live under the arbitrary rule of the tyrant of France."

An audacious libeller, brought before the Court on *ex-*

* Sewell's Essay.

officio information, had stuck up this hand-bill in different parts of London: — "His Royal Highness the Duke of Sussex! Twenty guineas reward!! Whereas, on the night of the 23d instant, a placard, signed 'a Yorkshireman,' was stuck up in various places without a printer's name affixed to it; now, as I suspect the Duke of Sussex to be the author, or privy to it, whoever will give information so that he may be acquitted of that suspicion, or the real offender brought to justice, shall receive from me the above reward, at No. 8. Hanway Street. Thomas Hayne." Lord Ellenborough told the jury to strike out the name of the Duke of Sussex, and substitute their own, and then ask if they would not feel themselves libelled to be advertised, with twenty guineas reward, in the same way as if they had been suspected of breaking open a house. The jury instantly found the defendant guilty.

When the Prince Regent, in 1812, had thought proper to retain his father's ministers in their situations, Messrs. John and Leigh Hunt, proprietors of the Examiner newspaper, published the following in answer to some poetical effusion of the Morning Post: "Who would have thought that this Adonis in loveliness was a corpulent gentleman of fifty? That the glory of the people was the subject of millions of shrugs and reproaches? That this Mecænas of the age patronised not a single deserving writer? Who would imagine that this delightful, blissful, wise, pleasurable, honourable, and immortal prince was a violator of his word, a libertine, over head and years in debt and disgrace; a despiser of domestic ties; the companion of gamblers and demireps; a man who has just closed half a century without one single claim on the gratitude of his country, or the respect of posterity?" Their eloquent counsel having declared that the paper which they ridiculed laid waste the principles of men by flattery, seducing them to vices, and then covering them with ridiculous, base, abject adulation, rather rashly added, "I am ready with proof of what I say." Lord Ellenborough at once interposed. "There is no proof, you know there can be no proof, on such a subject; there is no indulgence of license for trespass that can possibly be sug-

gested in an address to a jury that can allow any one to proceed in this way. You know your duty to the profession, and mine to the public justice of the country too well, seriously to offer such proof."

Mr. Brougham: "I submit that I am within the limits."

Lord Ellenborough: "What! in offering proof of the misconduct of others when defending the misconduct of a defendant on a criminal prosecution? This really must be curtailed, else the whole judicial character must be recast, for by this mode we shall be deprived of all order and decorum at the bar."

Mr. Brougham: "I may read the publication as part of my speech."

Lord Ellenborough: "There is no reading any thing as part of a speech in this place except evidence."

Mr. Brougham: "All I meant to do was allowed on a former occasion. I read part of a pamphlet of Sir R. Wilson."

Lord Ellenborough: "Yes; but when these things grow, they must be put a stop to.

"'Dabiturque licentia sumpta pudenter.'"

When it was further urged that the libel had been provoked by the gross, and fulsome, and silly flattery of some corrupt panegyrist—"What!" he said, "an offence against the law of the land, provoked by an offence against the laws of taste! How frail is the tenure by which men hold their reputation, if it may be worn down and compromised away, between the mischievous flattery of fulsome praise, and the open enmity of malignant abuse!' The whole of the summing up was, in fact, far more forcible against the defendant than the reply of the Solicitor-General, Sir W. Garrow, who prosecuted. The Hunts were convicted, and sentenced to two years' imprisonment.

In defending a series of political libels upon the Lord Lieutenant and Lord Chancellor of Ireland, Mr. Adam adventured the proposition that public characters might be held up to ridicule; but was suddenly checked and called to order in a voice of concentrated displeasure by the Chief Justice.

"Ridicule!" said Mr. Adam, "is a weapon which may be fairly and honourably employed, especially when it is in the true spirit of English humour, and for an object purely of a public nature. The bestowing of nicknames is a practice to which Englishmen are peculiarly addicted. We have all heard of Carlo Khan, with the India House on his back, and of the Colossus of the North, represented with one foot on Berwick Bridge, and the other on the Orkneys. In the present instance, Lord Hardwicke is again represented as a person devoted to agricultural pursuits."

Lord Ellenborough: "Do you maintain that a person has a right to ridicule his neighbour?"

Mr. Adam: "This is an information for a public libel, and not for private ridicule."

"Lord Ellenborough: "I suppose you have some authority. I do not wish to restrain your arguments, but it is a doctrine which never was, and never can be maintained."

His exposition of the law of libel, when summing up, was most unbending, and in its unreserved entirety may be questioned.

"It is no new doctrine, that if a publication be calculated to alienate the affections of the people, by bringing the government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime. It has been observed, that it is the right of the British subject to exhibit the folly or imbecility of the members of the government. But, gentlemen, we must confine ourselves within limits. If in so doing, individual feelings are violated, there the line of interdiction begins, and the offence becomes the subject of penal visitation."

The feelings of the libelled individual are not, however, the safe test of an offence being committed, nor can the measure of the injury be truly estimated by the sensibility of the person assailed. Private character, distinct from the performance of public duty, must not be impugned — the sanctities of the hearth are to be respected by the news-writer — the public should not be invited to step across the threshold of any man's home. Thus, an author may be ridiculed for a

silly work, but the writer will not be held irresponsible, if he wound the private character of the author, separate and apart from his work. This distinction was carefully pointed out by the Chief Justice in an action brought by Sir John Carr, an Irish knight, against Hood, the publisher of an amusing review of his travels. There was a comic print prefixed to this satirical commentary, with a motto, "You shall see what you shall see, the knight-errant's regret at leaving Ireland," representing a grotesque figure, with a handkerchief to his eyes, and a number of ridiculous figures following him, setting up the Irish howl; a huge porter carrying his MS. travels, which are so heavy that the weight of them obliges him to bend under them, whilst in the left hand he carries the wardrobe of the knight-errant, encompassed in a small pocket-handkerchief, &c. The publication itself commences by observing that the writings of the plaintiff consisted of nothing worth paying for, except the fine binding, the fine paper, and the goodness of the print, and there was nothing to recommend them except the wideness of the margins.

Lord Ellenborough interrupted Mr. Garrow, when expatiating on the plaintiff's grievance, to declare his conviction that this was no libel.

"Here the supposed libel has only attacked those works, of which Sir John Carr is the avowed author; and one writer, in exposing the follies and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest weapon that can be employed for such a purpose. If the reputation, or pecuniary interest, of the persons ridiculed suffer, it is *damnum absque injuriâ*. Where is the liberty of the press, if an action can be maintained on such principles? Perhaps the plaintiff's Tour through Scotland is now unsaleable; but is he to be indemnified by receiving a compensation in damages from the person who may have opened the eyes of the public to the bad taste and inanity of his compositions. Who would have bought the works of Sir Robert Filmer after he had been refuted by Mr. Locke? but shall it be said that he might have sustained an action for defamation against that great philosopher, who was labouring to enlighten and ameliorate mankind. We really must not

cramp observations upon authors and their works. They should be liable to criticism, to exposure, and even to ridicule, if their compositions be ridiculous, otherwise the first who writes a book on any subject will maintain a monopoly of sentiment and opinion respecting it. This would tend to the perpetuity of error. Reflection on personal character is another thing. Show me an attack upon his character unconnected with his authorship, and I shall be as ready as any judge who ever sat here to protect him; but I cannot hear of malice on account of turning his works into ridicule.

"The critic does a great service to the public, who writes down any vapid or useless publication, such as ought never to have appeared. He checks the dissemination of bad taste, and prevents people from wasting both their time and money upon trash. I speak of fair and candid criticism; and this every one has a right to publish, although the author may suffer a loss from it. Such a loss the law does not consider as an injury, because it is a loss which the party ought to sustain. It is, in short, the loss of fame and profits, to which he was never entitled."

After a verdict for the defendant had been recorded in accordance with his opinion, the Chief Justice thought it necessary to caution the audience against any misunderstanding of what had passed. "I hope nobody will understand from the result of this trial that there is the least countenance given to slander or to ridicule any author, any more than any other individual, unless such ridicule be connected with his works, and the author is embodied with his work; for courts of justice are as tender of the moral characters of all men, whether they be authors or not, as they are firm in the maintenance of the right of every individual to give a free opinion on every publication of a literary work."

The magnanimous author of this able exposition of the law was loudly commended for his sound opinion by the clever writer of the "Political Register," who carries the defence of ridicule as an expositor of truth too far. "As to ridicule, good Lord! what would Dryden, Pope, and Swift have said, had they been told that, in their country, it would become a crime to wound men's feelings by holding them up to ridi-

cule! Ridicule is a thing that will not attach where it ought not. I defy Mr. Gillray to turn Lord Nelson's skill and courage into ridicule. You may attempt to ridicule any thing. There must be the ingredients of ridicule in the thing ridiculed, without which, to attempt to ridicule, is like attempting to strike fire out of clay. Well, then, ridicule is, in all cases, not only innocent but laudable, because that which is ridiculous ought to be ridiculed. What must the world think of the man, or set of men, who can come into a court of justice and demand reparation, or vengeance, for having been *laughed at?* who like Caliban can come and say, 'Mark how he mocks me; I pray thee, my lord, bite him to death?'"

As affected the publishers and utterers of libel upon men in high station there was, during the greater part of the time that Lord Ellenborough presided over the King's Bench a public and official accuser, both ready and willing himself to bite them to death. Fine and imprisonment, and, in some instances, the pillory, were unsparingly inflicted by the Court on a litter of slanderers, which, notwithstanding, continued to increase so rapidly, that in one year Sir Vicary Gibbs, then attorney-general, had forty *ex-officio* informations on the file.

"It is not only," said that unpopular officer, "those who are libelled, but 10,000 who are not libelled, who feel the scourge of the libeller, and whom I am bound to protect." We have seen in the life of Sir Vicary Gibbs with what chivalrous zeal he held the shield before the Chief Justice himself. His strenuous efforts did not avail, however, even to protect Lord Ellenborough from being caricatured on the stage. His friend and patron the Prince Regent interfered to prevent this dramatic exhibition, and succeeded, for his weapons were flattery and compliment. In Kenney's farce of "Love, Law, and Physic," Matthews imitated Lord Ellenborough's charge to the jury.* The effect, we are told, was quite astounding. The pit was almost filled with men of law. Soon after Matthews received a request that he would go to Carlton House on a certain evening. He found the Prince surrounded by a very small circle. After a most

* Memoirs of Charles Matthews.

gracious reception the general conversation was resumed, and Matthews was for some time at a loss to guess the immediate cause of his invitation. At length the Prince began to speak of the extraordinary sensation Matthews' recent imitation had caused, adding, that he had the greatest desire in the world to hear it, and concluded by saying that it would be considered as a favour if Matthews would then give the charge to the jury, as he had given it on the first night of the new farce. Matthews obviously hesitated, and the Prince said, "Oh, don't be afraid, Mr. Matthews; we're all tiled here. Come, pray oblige me, I'm longing to hear it: I am something of a mimic myself. My brother here (turning to the Duke of York) can tell you that I give a very fair imitation of Lord Eldon. With respect to yours of Lord Ellenborough, it was not so well, when you found it so taken up to continue it in public; and I am very glad your own good taste and feeling prompted you to refuse a repetition of it; but here you need have no scruples." There were about twenty present. Mr. Matthews of course obeyed. The Prince was in raptures, and declared himself astonished at the closeness of the imitation, shutting his eyes while he listened to it with excessive enjoyment. "It is the man himself," he exclaimed. The Duke of York approved in peals of laughter.

The clever mimic returned home delighted with his intoxicating reception, and the Prince's object was gained. Had he preferred to interfere through the medium of his law officer, there would have been a repetition of the scene, and probably an O. P. riot.

The propriety of prosecutions by the attorney-general has been greatly questioned, as they tend, by the enlarged circulation which is afforded the notorious paper, to foster in some degree and cherish the crime. Whether it should be exposed in silent contempt to the force of public opinion, or submitted to the tender mercies of the attorney-general, was a question entirely within the cognisance of the law officers of the Crown; and when they, in the exercise of their discretion, brought the delinquents on the floor of the court, it could scarcely be expected that the judge would deal leniently with

them. Where the bitter spirit of Gibbs, like the burning star of the Apocalypse, whose name was called Wormwood, which turned the wholesome waters to bitterness and venom, put an unfair construction on the imputed libel, the Chief Justice had no difficulty in at once interposing. He snatched the proprietor of the "Morning Chronicle" from the perils of a conviction for his innocent reflection, that the successor of George III. would have the finest opportunity of becoming nobly popular, and occasionally interfered to check the rigour of the public prosecutor when running beyond the law.

When Sir Vicary Gibbs moved for a criminal information against a printer for calling Mr. Taylor, one of the candidates for Wells, a convicted adulterer, Lord Ellenborough said drily, "Let the complainant have recourse to the grand jury for redress." He would not permit the extraordinary penal jurisdiction of the court to be set in motion by such a tainted complainant. But when the publication appeared to the judge to be one deserving of punishment he never withheld his unmitigated opinion. "In cases like the present the law requires me to state my opinion to the jury, and where I have held a different opinion to that which I have of the present case I have not withheld it from the jury. I do pronounce this to be a most infamous and seditious libel."

"Of compromise, whether regarding his opinions or his wishes, Lord Ellenborough knew not the meaning—of fear, in any of its various and extensive provinces, he knew not even the name." * "He could," says the same eloquent observer, "powerfully address the feelings, whether to rouse indignation at cruelty, or contempt at fraud, or scorn at meanness; for his own nature had nothing harsh in it except his irascible temper, quickly roused as quickly appeased; his mind was just, abhorring any deviation from equity; his nature was noble, holding in utter contempt every thing low or base; his spirit was open, manly, honest, ever moved with disgust at any thing sordid or tricksy. 'It remained for the 50th of George III.,' he said of some quiddity started in the year 1810, 'to discover this crotchet. If you cannot elevate your

* Lord Brougham's Historical Sketches.

mind, sir, above such paltry objections, you will never succeed, or deserve to succeed, in your profession.' "

A review of the preceding cases (and many more to the same effect might be cited) will suffice to show the independence and moral fearlessness of the noble lord: we must turn to the pages of East, and Maule and Selwyn, to the Reports of Espinasse and Campbell, to ascertain his depth of thought, his sound logical reasoning and extent of legal research — an extent rarely equalled, and never surpassed. At no period of our legal history were decisions pronounced from the bench that carried with them stronger internal evidence of justice, wisdom, and learning. No judge ever analysed an immense and confused heap of contradictory matter with more perspicacity, or, when cases were apparently conflicting, reconciled the seeming difference with greater acumen, or showed their legitimate bearing on the point at issue with more stringent force. Eminent for the largeness, no less than for the accuracy of his views, alike ready to grapple with the development of principles, and with their general application; possessing an entire mastery over that great body or consuetudinary rules, which formed the ancient jurisprudence of England, and having strengthened his acquaintance with the cases in the books by painful study, he reposed a firm reliance on himself, and a confidence in the correctness of his judgment, which very seldom deceived him, and was of essential advantage to suitors. A good lawyer, knowing the grasp of mind and quick-sightedness of his chief, could advise with comparative precision on the propriety of bringing an action. His decisions on mercantile law, especially on cases of insurance, have built a solid system on the foundations laid by his two immediate predecessors, while questions of evidence, expanding with the growing wants and interests of society, have been raised under his guidance to the dignity of a science. Even unprofessional readers, to whom science is a mystery, must admire "the long-resounding march and majesty, divine" of the sentences which embodied his decisions, — wrought in the Johnsonian school, oppressed with the sterling bullion of thought, and stamped with the latinized phraseology, which the doctor would have loved to use, had he been

permitted by cruel fate to realise his fond desires, and (as Lord Lichfield) to preside over a court of law.

The grave vindication which Lord Ellenborough pronounced, with almost oracular wisdom, of the privileges of the House of Commons, was alike worthy of the occasion and himself.

These are a few of the most salient passages.*

"The privileges which have been since enjoyed, and the functions which have been since uniformly exercised by each branch of the legislature, with the knowledge and acquiescence of the other House, and of the King, must be presumed to be the privileges and functions which then, that is, at the very period of their original separation, were statutably assigned to each. The privileges which belong to them seem at all times to have been, and necessarily must be, inherent in them, independent of any precedent; it was necessary that they should have the most complete personal security to enable them freely to meet for the purpose of discharging their important functions, and also that they should have the right of self-protection: I do not mean merely against acts of individual wrong; for poor and impotent indeed would be the privileges of parliament, if they could not also protect themselves against injuries and affronts offered to the aggregate body, which might prevent or impede the full and effectual exercise of their parliamentary functions. This is an essential right, necessarily inherent in the supreme legislature of the kingdom, and of course as necessarily inherent in the parliament assembled in two houses as in one. The right of self-protection implies, as a consequence, a right to use the necessary means for rendering such self-protection effectual. Independently, therefore, of any precedents or recognised practice on the subject, such a body must, *à priori*, be armed with a competent authority to enforce the free and independent exercise of its own proper functions, whatever those functions might be. On this ground it has been, I believe, very generally admitted in argument, that the House of Commons must be, and is authorised to remove any imme-

* Burdett *v.* Abbott, 14 East, p. 1.

diate obstructions to the due course of its own proceedings. But this mere power of removing actual impediments to its proceedings would not be sufficient for the purposes of its full and efficient protection: it must also have the power of protecting itself from insult and indignity, wherever offered, by punishing those who offer it. Can the High Court of Parliament, or either of the two Houses of which it consists, be deemed not to possess intrinsically that authority of punishing summarily for contempts, which is acknowledged to belong, and is daily exercised as belonging, to every superior court of law of less dignity undoubtedly than itself. And is not the degradation and disparagement of the two Houses of Parliament in the estimation of the public, by contemptuous libels, as much an impediment to their efficient acting with regard to the public, as the actual obstruction of an individual member by bodily force, in his endeavour to resort to the place where parliament is holden? And would it consist with the dignity of such bodies, or, what is more, with the immediate and effectual exercise of their important functions, that they should wait the comparatively tardy result of a prosecution in the ordinary course of law for the vindication of their privileges from wrong and insult. They certainly must have the power of self-vindication and self-protection in their own hands; and if there be any authenticity in the recorded precedents of parliament, any force in the recognition of the legislature, and in the decisions of the courts of law, they have such power."

After thus triumphantly refuting all the arguments that could be suggested on behalf of the plaintiff, Lord Ellenborough paused to pass a lofty panegyric on the intrepid champion against privilege, Serjeant Shepherd.

"It is highly honourable and useful to the administration of justice, that advocates at the bar should possess the talents and firmness that the learned serjeant, who has just sat down, has this day displayed, in maintaining causes which are confided to them by clients: at the same time, it is not less honourable to themselves, and useful to the administration of justice (and without which justice could hardly be well administered), that in the discharge of that duty they should

maintain a correct observance of decorum, and deference to the rules of law. Upon this occasion he has certainly been obliged, by the necessity of the case, to press the topics presented to him to the extreme; at the same time that he has conducted his argument with a due respect for the authority of the laws, and towards those who administer them."

The same terse tone of independent stateliness characterises his remarks on preceding judges.

"Judge Blackstone made the law of England to be studied in other countries, and he thus threw a dignity round the wisdom of his own. It was not such a man that he would presume to treat with offence; but as he could not flatter the living, so neither would he bestow a fulsome panegyric on the dead. Blackstone, when he compiled his lectures, was comparatively an ignorant man, he was merely a fellow of All Souls, and moderately skilled in the law. His true and solid knowledge was acquired afterwards. He grew learned as he proceeded with his work. It might be said of him at the time he was composing this book, that it was not so much his learning that made the book, as it was the book that made him learned."

The manner in which Lord Ellenborough points out a defect in one of his ablest predecessors is equally manly and just.

"No man has a higher respect for Mr. Justice Buller than I have, and, therefore, it will not be supposed that I mean an insinuation that he wished to introduce novelties; but certainly his idea was to go to the very extent of the law, and adopt something which had not occurred to the wisdom of others who had gone before him. I do not mean any disparagement; but certainly that was the bent of his mind."

With similar freedom the Chief Justice denounced Lord Mansfield's attempts to strain a creditor's powers "as perilous innovations on the fundamental principles of our jurisprudence."

Those were, indeed, proud days for the Court of King's Bench, when questions of the highest import could be argued by such lawyers as Gibbs, and Shepherd, and Holroyd, and

decided by such judges as Ellenborough and Lawrence, and Le Blanc, and Bayley.

"The Court of King's Bench," said Mr. Dodd*, "was during that time filled by men of singularly vigorous understandings, and profound professional knowledge, while the great variety and difficulty of the cases arising from extended trade, respecting questions of insurance, of charter parties, of principal and agent, of factors and brokers, of *del credere* commissions, of insurers and underwriters, the rights of aliens, neutrals, and belligerents, questions of set-off, of stoppage *in transitu*, of bankruptcy, of compositions with creditors, of agreements within the fourth and seventeenth section of the Statute of Frauds, enabled those judges to follow out the general principles of the law of contracts, which had been settled by Lords Mansfield and Kenyon — to apply them to the more complicated facts, and novel combination of circumstances, which then arose. Lord Ellenborough's decisions are not less remarkable for their general soundness and authority than for that peculiar Johnsonian vigour, that originality of thought and expression, which so strongly impresses them on the memory of the reader."

He was naturally proud of his judgments, and too confident of their correctness to allow them to be lightly questioned.

"If we are desired to review the case of Leame *v.* Bray, the matter should be brought before us in a different shape than a motion for a new trial. We do not entertain so slight an opinion of our own judgment as to allow it to be thus canvassed."

His decisions on points of law are embalmed in this terse and masculine phrascology: —

"I do not think it is a trespass to interfere with the column of air superincumbent on the close. I once had occasion to rule upon the circuit that a man who from the outside of a field discharged a gun into it, so that the shot must have struck the soil, was guilty of breaking and entering it. If this board overhanging the plaintiff's garden be a trespass, it would follow that an æronaut is liable to an action of

* Lectures at the Law Institution.

trespass at the suit of the occupier of every field over which his balloon passes in the course of his voyage!" Again —

In Rex *v.* Cross, Lord Ellenborough ruled, that it was an indictable offence for stage coaches to stand plying for passengers in the public streets. "No one can make a stable-yard of the King's highway:" also in Rex *v.* Jones, that it was indictable for a timber merchant to cut logs of timber in the street adjoining his timber yard. "He is not to eke out the inconvenience of his own premises by taking in the public highway into his timber yard, and, if the street be narrow, he must remove to a more commodious situation for carrying on his business."

The admiration which attaches to the learned judge, himself a mighty master both of thought and diction, cannot find more apt terms of eulogy than the eloquent language of Archbishop Magee addressed to Lord Clare: "Equally insensible to the acclamations and the menaces of popular zeal, he stepped not for a moment from the post of danger, the post of duty, and sought no safety from the perils which assailed him, save by what might arise by presenting to them a bold and manly front." Uniting an ardent love of justice with a rapid intuition of truth, the Chief Justice combined in himself two great qualities of the judicial station, — integrity and despatch; and thus, as far as lies in the power of man, he diminished the evils of litigation by taking from law all its delay and much of its uncertainty.

To purify the Courts of Justice was with him an object of unremitting attention; and amongst the unprincipled part of the lower order of legal practitioners it will not easily be forgotten, with what unwearied vigilance he detected and punished every attempt to defeat the claims of equity by the technical dexterities of a fraudulent chicane.

Never was the daily working of the Court thrown off (if we may use the expression) by a more powerful intellectual machine. Greatly as causes multiplied in his time, his never-tiring assiduity kept them so completely in check, that few were left to stand over the commencement of the next term. As a test of how much this assiduity achieved, Mr. Brougham related in the House of Commons, that on one occasion Lord

Ellenborough had to dispose of a Guildhall paper, containing 588 causes, which he effected to the astonishment and admiration of the profession. "In proof of the superior sway which attached to him in proceeding with business, he (Mr. Brougham) remembered that shortly before the Chief Justice retired, one or two of the Puisne Judges were in the habit of sitting for him in turns, but, vexed one morning at the accumulating arrear of business, his Lordship, as if by a sudden illumination, which was to shine out before his mental light became eclipsed for ever, resumed his place in Court, and swept away, in the course of that single sitting, seventeen causes, which stood in the way of the regular and quick despatch of business." *

Of the rapidity of his progress, and the quiet decision with which he could put down an interruption, like the lion's paw crushing some impertinent quadruped, Serjeant Talfourd has given with much felicity an amusing illustration.†

"Lord Ellenborough had come down after an interval, during which his substitutes had made slow progress, and was rushing through the list like a rhinoceros through a sugar plantation, or a Common Serjeant in the evening through a paper of small larcenies; but just as he had nonsuited the plaintiff in the twenty-second cause, which the plaintiff's attorney had thought safe till the end of a week, and was about to retire to his turtle, with the conviction of having done a very good morning's work, an undeniable voice exclaimed, 'My Lord!' and Mr. Hunt was seen on the floor with his peculiar air — perplexed between that of a bully and a martyr. The Bar stood aghast at his presumption; the ushers' wands trembled in their hands; and the reporters, who were retiring after a very long day, during which, though some few city firms had been crushed into bankruptcy, and some few hearts broken by the results of the causes, they could honestly describe as 'affording nothing of the slightest interest except to the parties,' rushed back and seized their note-books to catch any word of that variety of rubbish which is of 'public interest.' My Lord paused and looked thunders, but spoke none. 'I am here, my Lord, on the part of the boy

* Parliamentary Debates. † Talfourd's Vacation Rambles.

Dogood,' proceeded the undaunted Quixote. His Lordship cast a moment's glance on the printed list, and quietly said, 'Mr. Hunt, I see no name of any boy Dogood in the paper of causes,' and turned towards the door of his room. 'My Lord!' vociferated the orator, 'am I to have no redress for an unfortunate youth? I thought your Lordship was sitting for the redress of injuries in a court of justice.' — 'O no, Mr. Hunt,' still calmly responded the Judge — 'I am sitting at Nisi Prius; and I have no right to redress any injuries, except those which may be brought before the jury and me, in the causes appointed for trial.'—'My Lord,' then said Mr. Hunt, somewhat subdued by the unexpected amenity of the Judge, 'I only desire to protest.'—'Oh, is that all?' said Lord Ellenborough: 'by all means protest, and go about your business!' So Mr. Hunt protested and went about his business; and my Lord went unruffled to his dinner, and both parties were content."

But though most prompt and energetic, Lord Ellenborough was not sufficiently patient, nor so impassive as a Judge ought habitually to be. "He was apt to overlook suggestions, which, though untenable, might be more feebly urged than suited his palate. He was fond of taking the case prematurely into his own hands. He despatched business with great celerity, and for the most part with success. But causes were not sifted by him with that closeness of scrutiny, and parties were not suffered to bring forward all they had to state with that fulness and freedom, which alone can prevent misdecision, and insure the due administration of justice."*

When in strong health the Chief Justice has been known to remain seventeen or eighteen hours at a sitting in Court; and on occasion of the trials of Colonel Despard and of Lord Cochrane, he sat through the night, with an intrepidity of endurance that might have called for a committee of inquiry, had he survived the unreformed House of Commons. The constantly recurring demands of his station at Westminster, at Guildhall, at the Old Bailey, in chambers, and on circuit, — in Banc, and at Nisi Prius, — in the Council Chamber,

* Historical Sketches.

and in the House of Lords, — proved too severe a burden for even his iron frame. The time was no more when the judges could, as Fortescue describes, dine at noon, and devote the rest of the day to reading or innocent recreation. The Chief Justice had no leisure for recreation, and did not desire it; but the health of mind and body required longer intervals of repose than he could, consistently with his own strict sense of duty and the claims of the suitors, afford to give.

He was verging to the close of his judicial career, when he found himself imperatively called upon to try William Hone, then an obscure bookseller, who had been prosecuted by three *ex-officio* informations, for the publication of three parodies, "The late John Wilkes' Catechism," "The Political Litany," and "The Sinecurists' Creed." Mr. Justice Abbott had presided on the first day's trial, and was not thought to have held the defendant, who conducted his case with a boldness and ability worthy of a better cause, in sufficient subjection. Accordingly, on the second day, in the middle of December, 1817, the undaunted Chief Justice re-appeared in his Court, pale and wan, as if death had already set his seal upon him, but with a spirit unbroken, more stern in fact from the inroads of disease. "I am glad to see you, my Lord Ellenborough," shouted Hone; "I know what you are come here for; I know what you want."—"I am come to do justice," retorted the learned Lord: "my wish is to see justice done." — "Is it not rather, my Lord," said Hone, "to send a poor devil of a bookseller to rot in a dungeon?" The defendant was mistaken, however, in his hope of "muzzling the old lion." He had loaded the table with parodies in prose and verse, from Swift to Canning, and loudly did the judge enunciate his displeasure, when the defendant began to read the hoarded libels of former days, and to justify libelling in the gross. When a crowded Court testified applause of the extracts and of the spirited commentary, Lord Ellenborough demanded the instant attendance of the Sheriffs, whom he fined for scandalous neglect, and concluded his emphatic charge to the jury, as to men who had been sworn on the Holy Evangelists, that "there were many things in the parodies which had

been read, which must be considered profane and impious, but this of the defendant transcended them all in magnitude. He would deliver them his solemn opinion, as he was required by Act of Parliament to do; and, under the authority of that act, and still more in obedience to his conscience and his God, he pronounced this to be a most impious and profane libel. Believing and hoping that they (the jury) were Christians, he had not any doubt but that they would be of the same opinion." They were of a different opinion; and the judge, determined not to be overcome in a cause which he conceived the righteous cause of law and religion, sat next day to try the defendant on the third charge, and was again defeated. There is little doubt that he acted with too inexorable rigour in trying the prisoner on the third and least noxious of the publications, after he had been acquitted by two special juries; but in condemning the policy of his conduct, we must not fail to do justice to the uprightness of his motives. Hone marched, as in triumphant procession, from the hall, not only in the elation of escape and victory, but with the consciousness of having deeply wounded the pious feelings of the judge. He had alluded to the writings and heterodox tenets of Bishop Law, when Lord Ellenborough interrupted him in a broken voice — for the first time broken — "For decency's sake forbear!" *

Nature had exhibited evident symptoms of decay before his strenuous and ill-judged efforts on the trial of Hone; his frame had been shaken by violent attacks of gout, and during the Hilary and Easter terms of 1818 his absence from Court became more frequent, and his calls on the Puisne Judges for assistance in the sittings after term were often, though reluctantly, renewed. The fretfulness of his manner, and his

* There is no truth in the popular notion, that Lord Ellenborough was killed by the result of Hone's trial. As a proof how little his nerves were shaken, the late Bishop Turner, who rode with him from Westminster, has mentioned in private conversation that he laughed at the hooting and tumultuous mob, who surrounded the carriage, remarking that their saliva was more dangerous than their bite. He suddenly pulled the check-string at Charing Cross: "It just occurs to me that they sell the best red herrings at this shop of any shop in London; buy six." The dainty was purchased, and the judge, whom the people supposed to be half slain, made a hearty meal.

irritable temperament, proved clearly the workings of disease when he occasionally re-appeared in the submissive and silent hall, and the frequent interruptions of "I will not recast the practice of the Court; I do not sit here as pædagogue to hear first principles argued. What are the issues? What can you mean by wandering thus wildly from the record? I will not tolerate such aberration; I cannot engender or inoculate my mind with a doubt; I will not endure this industry of coughing;" attested his impatient anxiety, and fast growing inability to sustain the toils of office to the last. He clung to his situation with adhesive grasp, and girded himself with a sort of desperate fidelity to perform its duties, at a time when, as he wrote to a friend, "he could scarcely totter to his seat, and could only take notes *manu lassissimâ et corpore imbecillo.*" He rallied before the long vacation, and during the calm of the recess deluded his spirits with the hope that he might resume his duties once more. The physicians recommended Bath, but his failing strength rendered the journey hazardous; and just before Michaelmas term commenced, tardily and with repining, he was compelled to announce to the Chancellor his inability to remain. Only two years had passed since he had written to Lord Eldon to deprecate his intention of retiring. Both letters reflect high credit on the writer.

The first sets off in high relief his habitual tone of manly sense, high spirit, and lofty fortitude, with the more amiable traits of friendliness and good feeling:—

"My dear Lord, "Roehampton, October 12. 1816.

"I eagerly seize the hope of your Lordship's early convalescence, which was excited in my mind by your Lordship's letter received yesterday, though you express yourself less sanguinely on the subject than I could have wished. The languor of retiring disease is often as painfully distressing as the malady itself in its utmost violence had been. Allow yourself, my dear Lord, to think at present of nothing but the *business of recovery*,—and only of any *other* business when *that* is accomplished. I only venture with great earnestness and sincerity, but with great humility also, to deprecate any *resolutions* you may be disposed to form at the present moment. When you shall have recovered the tone of your

nerves and spirits (which I hope to God you soon will), *then* look round you, and having weighed all circumstances, both as they respect the public and yourself, decide upon the measure which it may be most wise and expedient to adopt. We all owe our utmost usefulness to our country—your Lordship has means of usefulness which no other person possesses in an equal degree. It might look like flattery if I went into particulars on this subject; but in a word, the *law* and the *state* peremptorily forbid you to *retire* (and most especially the latter) at the present moment. This is not, I assure your Lordship, the language of a mere partial friend; but it is the sentiment, I believe, of all Westminster Hall (which can afford to endure no more losses than it has within a short period sustained); it is the language and feeling of your colleagues in government, and would be that of the best informed and disposed members of the community at large, if they were consulted upon the subject. I am afraid your Lordship will think I have trespassed upon you too long on this topic, but it is too painfully near my heart. *Si tu deseris, nos periimus.*"*

Within two years, the resignation which he had thus earnestly and successfully sought to avert in another, age and infirmity compelled Lord Ellenborough to announce for himself, in the following truth-telling communication: —

"My dear Lord, "Worthing, September 21. 1818.

"The decay of many of my faculties, particularly of my eyesight, which I have painfully experienced since the beginning of the present year, strongly admonishes me of the duty which I owe to the public and myself on that account; and as I have now held the office of Chief Justice of the Court of King's Bench for more than sixteen years, viz. from the 12th day of April, 1802, I am entitled, under the Acts of Parliament, to request, which I most humbly do, the permission of His Royal Highness the Prince Regent for leave to retire on the first day of next term, upon that amount of pension, which by those Acts of Parliament His Royal Highness the Prince Regent is authorised to grant to a Chief Justice of the King's Bench retiring after a period of fifteen years' service. If I had been able to depend upon my strength for the due and satisfactory execution of my most important office for a longer period, I should not now have tendered my resignation to his Royal Highness."

The grief with which the Prince Regent received the in-

* Twiss's Life of Lord Eldon.

telligence of Lord Ellenborough's compulsory resignation was communicated to him in the following elegant letter of condolence*:—

"My dear Lord,

"I have only this moment been informed of your arrival in town, and I cannot suffer it to pass without conveying to you the heart-felt grief with which I received from the Chancellor a few days ago, his report of the melancholy necessity under which you have found yourself of tendering your resignation, and of your retiring from public life. As to my own private feelings upon this most sad occasion, I will not attempt their expression; indeed, that would be quite impossible — but as a public man I do not hesitate most distinctly to state, that it is the heaviest calamity, above all in our present circumstances, that could have befallen the country. My Lord, your career since the moment you took your seat, and presided in the high court committed to your charge, can admit of but one sentiment, and but of one opinion; it has been glorious to yourself, and most beneficial to the nation. You have afforded an example combining wisdom with every other talent and virtue which exalt your character, and place it beyond all praise. With these sentiments, and such a picture before me, where can I hope to find, or where can I look for that individual who shall not leave a blank still in that great machine, of which you were the main-spring and brightest ornament? If, however, my dear friend, there can be consolation for us under such afflicting circumstances, that consolation is, that you carry with you into your retirement the veneration, gratitude, and admiration of the good, and the unbounded love and affection of those, who have had the happiness of associating more intimately with you in private life. I confess that the magnitude of the loss we are about to sustain presses so heavily upon me, that I have not the power of adding more than that my constant and most fervent wishes for your health, comfort, and happiness will ever attend you, and that I remain always,

"My dear Lord, your most sincere and affectionate friend,

"Carlton House, October 18th, 1818. GEORGE P. R.

In a fortnight afterwards, the Chief Justice resigned his office into the hands of an able and worthy successor.

His companion in arms—for law has its conflicts as fierce

* Jerdan's National Portrait Gallery.

as war — Sir Vicary Gibbs withdrew from the Chief Justiceship of the Common Pleas at the same time, and from the same exigency. "Were the body to sue the mind," says Plutarch, "it would be found a ruinous tenant;" and so it was with both these eminent lawyers. The duties of life had been always, in the estimation of Lord Ellenborough, more than life; to cease to try and determine, was in his apprehension to cease to live; and so it proved! After a long illness, borne with a Christian's courage and soothed by a Christian's hope, he expired, one short month after his resignation, at his house in St. James's Square, on the evening of Sunday, Dec. 11. 1818, aged sixty-eight. His remains were carried to the grave on the twenty-second, in a long funereal pomp, the gloomy pageantry of which could be scarcely discerned through the dense fog, and deposited in the vault at the Charter-House, by the side of the dust of Mr. Sutton, its founder. He left a large family, consisting of five sons—Edward, the present Lord, now Earl of Ellenborough, advanced by his merits two steps in the peerage; Charles Ewan Law, M. P. for Cambridge University, and Recorder of London; John, deceased; William Towry, Chancellor of the Diocese of Bath and Wells; and William John Law, one of the Insolvent Law Commissioners; together with five daughters. He bequeathed an annuity of 2000*l.* to his widow, and 15,000*l.* each to his younger children. He died possessed of ample wealth, which has been computed to amount to 240,000*l.** So munificent a fortune may be easily accounted for. There were three offices of very considerable value at the disposal of the Chief Justice of the King's Bench; those of the Chief Clerk, the Custos Brevium, and the Clerk of the Outlawries. The sale of these offices is now most fitly abolished, as inconsistent with the dignity and independence of the judicial station. Luckily for Lord Ellenborough two of these places fell vacant shortly after his appointment. He refused 80,000*l.*, which was offered for the disposal of the Chief Clerkship; and until his son was of age to receive it, added its amount, which was 7000*l.* a year, to his own salary, realising thus an income of 16,000*l.*, a

* Gentleman's Magazine, and Annual Obituary.

sum considerably larger than was enjoyed by those who immediately preceded and succeeded him. It equalled, nay, in some years exceeded, the income of the Lord Chancellor, and justified, even in a worldly sense, the sagacity of the learned Lord's decision, when in 1806 he refused the seals. Before their acceptance by Erskine, the seals had been offered to Chief Justice Mansfield, who refused them on account of age, and to Lord Ellenborough, who likewise declined them on the score of his family. He was accustomed, with that loftiness of spirit which seems to have been an absolute property of his nature, to complain of the miserable driblets, the 13*s.* 4*d.* and 1*l.* 1*s.*, of which that princely income was composed. They would weigh his services over-nicely in the balance who should deem him, fortunate as he was, too abundantly remunerated.

In manners the Chief Justice was stately and reserved, punctiliously polite in his bearing to the bar, but dignified and severe.

Before his elevation to the bench he had the reputation of being a very pleasant companion. The pungency of his somewhat coarse wit, says an able critic in the "Law Review," his broad, odd, sometimes grotesque, jokes, his hearty merriment, which he seemed to enjoy, rather by a quaint look and indescribable manner, than by any hearty laughing, altogether formed a most agreeable and lively person, whether to hear or see.

A good specimen of his pungent humour, not always observant of time or place, is given by Lord Eldon. Upon one of the royal marriages, there being much talking during the ceremony, in one corner of the drawing-room, Lord Ellenborough exclaimed, "Be silent in that corner of the room, or you shall be married yourselves!"

That grave, almost austere, deportment in public, which is said to become monarchs and chief magistrates, peculiarly distinguished Lord Ellenborough after his elevation as Chief Justice of England. He was sometimes accused of affecting too much state, and of making the line of demarcation too deep and marked between the Bench and the Bar.

His cousin, Professor Christian, who rejoiced in the office

of Chief Justice of Ely, complained especially of this offensive hauteur. "I know why Lord Ellenborough treats me thus," said the chafed dignitary one day, after some discomfiture in Court, "he is jealous of his brother Chief Justice!"

So sensitive were the Bar at this somewhat fastidious estrangement of their chief that, according to James Smith, when Lord Ellenborough set the present fashion of moving west to St. James's Square from Bloomsbury, the circumstance gave general dissatisfaction, and was a prominent topic in the newspapers for a week!

As if to keep aloof from the body of practitioners, the Chief Justice discontinued those evening conversation-parties in term, to which every gentleman, well educated and respectably introduced, was in the habit of being admitted. To judge from the freezing ceremonies at Serjeants' Inn Hall, their social loss was not to be deplored.

"I remember," said Lord Brougham, "being told by a learned serjeant, "that, at the table of Serjeants' Inn, where the judges meet their brethren of the coif to dine, the etiquette was, in those days, never to say a word after the Chief Justice, nor ever to begin any topic of conversation. He was treated with fully more than the obsequious deference shown at court to the sovereign himself." Such transcendental stateliness must have been exaggerated, but if not, I am glad to believe that it has passed away for ever. The body of serjeants were too much gentlemen, surely, to have patiently endured, and the Chief Justice too high bred a man systematically to inflict, such a paramount indignity.

In person Lord Ellenborough was robust, but ungraceful; above the middle size, and sinewy, his masculine frame presenting an appearance of great strength till shattered by disease. Sir Thomas Lawrence, taking a likeness of him in his official dress, in which he looked best, has thrown off a fine vigorous portrait. The broad and commanding brow, the large and regular features, the projecting eye-brows, dark and shaggy, the stern black eye, from which flashed not unfrequently indignation or contempt, gave a character of gravity not unmixed with harshness to his countenance, even when in repose. A dignified severity was its peculiar and prevailing

expression. His figure was ungainly, and his walk singularly awkward. He moved with a kind of semi-rotatory step, and his path to the place to which he wished to go was the section of a parabola. The serjeant employed to drill the Lincoln's Inn corps said that Mr. Law was the only person he could never teach to march, and would never make a soldier. Both Lord Ellenborough and Lord Eldon were turned out of the awkward squad for awkwardness. Those who judge of character by handwriting would find their theory strengthened on looking at his notes, which justify his own description in a letter to a friend*: "Pray, my dear Sir, write legibly to your great folks, for it would be melancholy to lose all the effect of the many good things I am sure you send them, by the carelessness of packing them up. For my own part, I continually regret having paid so little attention to so very necessary an art; and, as it is now somewhat too late to aim at the graces of writing, I stick fast to what only is in my power, a good, plain, stiff, legible character."

"Although in a character marked by such strength of features (to quote again the eloquent language of Magee), the lineaments of the softer virtues could scarcely be expected to mix, yet those who knew him in the unbendings of his retirement can fully attest the spontaneous emotions of a latent tenderness, which it seemed as much his study carefully to conceal, as in this age of affected sensibility it is that of others to display."—"There was a rough husk about him," said an intimate acquaintance, "and a hard shell like the cocoa-nut, but the core was not without milk." Uniting the law and firmness of Holt with the dignity and classical learning of Mansfield, he equalled them both in judicial ability, though deficient in placidity and grace. The defects which marked and shaded the character of the Chief Justice are those which peculiarly belong to Englishmen, and chiefly resolve themselves into faults of temper. He *did*, for the long term of sixteen years, *execute justice;* he *did maintain truth;* and all that obloquy can allege is, that he executed the one, in some few instances, with rigour, and boisterously main-

* The late Archdeacon Coxe, who wrote an exceedingly bad hand.

tained the other. But what are these defects? Not a feather's weight in the scale, when opposed to that painstaking diligence which never folded the hands in sleep — to that unflinching, sturdy independence which even enemies admired — to the moral integrity which equalled (it could not transcend) his intellectual strength, and the most perfect legal constitution, both by nature and training, that it was possible to form. By duties well and honestly done — by privileges well asserted — by aggressions on constitutional law well repressed — by the sturdy maintenance of all that was according to law, and the fearless subjugation of every thing against law, he has won a lofty place in the history of his country, and has left a name which is held in the highest honour by his profession. The writer of the present imperfect memoir has commented freely on a judicial life, whose greatness can admit of occasional censure. He has borne his pillar, however roughly hewn and imperfectly shapen, towards the erection of that monument which is justly due to the merits and honours of the deceased peer, and may repeat the hope of the veteran of antiquity, that, though the trophy is of perishable materials, when it should have been of marble, it may yet be allowed to stand from respect to the noble name recorded by it.

CHAPTER X.

THE LIFE OF LORD ERSKINE.

A COMPLETE life of this master of forensic eloquence has yet to be written. In the volumes of his speeches, reported with elaborate care, and the collection of those State Trials which darkened the close of the last century, there is raised indeed a tablet to his memory as durable as our language, — the κτημὰ ἐς ἀεί, which the Greek historian congratulated himself, and not in vain, on erecting. But of Erskine's daily skirmishes and triumphs in the courts, of his gay and happy temperament, of his social and companionable excellencies, of his wit and repartee, of those qualities of head and heart, which made the orator forgotten in the man, the traditions are becoming each year more faint, as the contemporaries who loved him pass away, with all their vivid recollections. In this neglect he has shared, it is true, the common fate of eminent lawyers, the best and greatest of whom, Nottingham, and Somers, and Hardwicke, failed to obtain a faithful chronicler.

It was reserved for the "Law Magazine" first to sketch those memorable portraits, that were long wanting in the gallery of national worthies; and in the "Lives of the Chancellors," a tardy justice may yet be rendered to the most amiable and best of advocates, Erskine. There is no name more dear to the profession which he gladdened, adorned, and exalted; no legal memory which is held in more affectionate esteem by the people. It will be my endeavour to concentrate the rays of light that illumine his character, as the idol of special juries, and glory of Westminster Hall; to bind together the Sibylline leaves which illustrate his life and conversation; to amass the materials that may hereafter be moulded and chiselled, by more skilful hands, into a monument worthy of his genius, and lasting as his fame.

The Honourable Thomas Erskine, third and youngest son of Henry David Erskine, tenth Earl of Buchan, in Scotland, was born in Edinburgh, in January, 1750. The name is derived from the barony of Erskine, in the shire of Renfrew, and, as a local surname, proves the high antiquity of his race. The earldom of Buchan can be traced to the time of William the Lion. Its lineage included the John Cumyn, whose wife placed the crown on the head of Robert Bruce, at his coronation at Scone; James Steuart, son of Jane, Queen of Scotland and the Black Knight of Lorn; Sir Thomas Erskine, sent ambassador to England by Robert III., and truly styled in the royal commission "consanguineus noster;" Alexander Lord Erskine, governor of Dumbarton Castle in the reign of James the Fourth; John, thirteenth Lord Erskine and Earl of Mar, Regent of Scotland in 1571, and John, second Earl of Mar, Lord High Treasurer of Scotland in 1603. During a space of four hundred years this noble family filled the highest situations of public trust that could be held by a subject, but without increasing the number of their paternal acres, or amassing wealth. In the middle of the eighteenth century, the representative of a race, which had swayed as regents the kingdom of Scotland, could not boast of a higher income than 200*l.* a year. These reduced circumstances prevented his youngest son from being trained for any of the learned professions, then the usual destination of the younger scions of Scottish nobility. He received, however, the rudiments of a classical education at the High School of Edinburgh and University of St. Andrew's — these seminaries affording the same advantages to boys which the English universities were originally intended to provide.

The following sprightly and affectionate letter of young Erskine to his brother, Lord Cardross, was written when twelve years old, from St. Andrew's: —

"My dear Brother, "August 11. 1762.

"I received your letter, and it gave me great joy to hear that you were in health, which I hope will always continue. I am in my second month at the dancing school. I have learned shintrews and the single hornpipe, and am just now learning the double hornpipe. There is a pretty large Norway ship in the harbour:

the captain took Harry and me into the cabin, and entertained us with French claret, Danish biscuit, and smoked salmon; and the captain was up in the town seeing papa to-day. He is to sail on Friday, because the stream is great. Yesterday I saw Captain Sutherland exercise his party of Highlanders, which I liked very well to see. In the time of the vacation Harry and me writes themes, reads Livy, and French with Mr. Douglas, between ten and eleven. Papa made me a present of a ring-dial, which I am very fond of, for it tells me what o'clock it is very exactly. You bid me in your letter write to you when I had nothing better to do, but I assure you I think I cannot employ myself better than to write to you, which I shall take care to do very often. Adieu, my dear brother, and believe me, with great affection,

Yours, T. E.

The note is written very neatly with lines. His mistake of grammar, in speaking of himself and his brother Harry, can scarcely be complained of, for in fraternal affection they were one.

In 1764 he went to sea as midshipman in a ship of war, the Tartar, commanded by Commodore Sir John Lindsay, nephew to Lord Mansfield, quitting at fourteen years of age those native shores which he never revisited till raised to the peerage, — as *ex* Lord Chancellor, and invested with the Order of the Thistle. He made voyages to North America and the West Indies; and from Kingston in Jamaica wrote another letter home, equally creditable to the feelings and good sense of the clever middy.

"The longer I stay in the West Indies I find the country more healthful, and the climate more agreeable. I could not help smiling when mamma mentioned in her letter how much reason you had to be thankful that you gave up your commission, or you would have gone to the most wretched climate on the earth. I don't know indeed as to the rest of the West India Islands, but sure I am if you had come here, you would have no reason to repent of it. To be sure to stay here too long might weaken a constitution, though hardly that, but to stay here some time is extremely serviceable. . . . I begin now to draw indifferently. I am studying botany with Dr. Butt, so I will bring you home drawings of all the curious plants, &c. and every thing that I see. I have sent mamma home a land turtle, to walk about Walcot garden: it is

very pretty, particularly its back, which is all divided into square lozenges; and the shell is as hard as a coat of mail."

The affectionate writer became in the course of this voyage so warm an admirer of the character of the British sailor, that in after-life he could not endure the notion of a change. He would hardly listen to a scheme for making them sober and orderly on shore. "You may scour an old coin," he wrote, "to make it legible, but if you go on scouring, it will be no coin at all."

Young Erskine did not remain in the service long enough to obtain the commission of lieutenant, though by the friendship of his commander he acted for some time in that capacity. However much attached to his shipmates, the chance of promotion appeared so slender to the unfriendly middy, that he quitted his vessel in despair, after cruising about for four years, soon after Sir John Lindsay had been relieved by Commodore Johnson. Another cause, which led to the change, has been attributed to the harsh demeanour and manners of his new commander. At eighteen Erskine entered the army, as an ensign in the Royals, or 1st regiment of foot. He obtained his commission on the 1st September, 1768. Most of the officers of the corps, as well as the Colonel, John Duke of Argyll, were his countrymen. In this regiment he remained seven years, but, as promotion came slowly, was only raised to a lieutenancy on the 21st of April, 1773. Before accompanying his regiment to Minorca, where it was stationed for three years, he committed an act of improvidence, and was married to a lady of good family, but of a fortune as narrow as his own. On the 29th of March, 1770, he was united to Frances, daughter of Daniel Moore, Esq., M. P. for Marlow, and, though subject at first to many privations, he had no reason to repent of his precipitancy. She became the fond parent of a numerous offspring, and lived till within a few months of her husband's attaining the seals, having well deserved his tribute on her monument, that she was the most faithful and most affectionate of women. During his long sojourn at Minorca, the married ensign solaced his leisure hours with reading aloud the old English authors. "He was more

familiar with Shakespear," we are informed*, "than almost any man of his age, and Milton he had nearly by heart. The noble speeches in 'Paradise Lost' may be deemed as good a substitute as could be discovered by the future orator for the immortal originals in the Greek models. The works of Dryden and Pope were next read, and committed to memory, with the avidity of a refined and well-formed taste." Nor were the hours of a garrison life, even when not devoted to study, wholly wasted or unprofitable. The ensign, just verging to manhood, acquired among his brother officers that knowledge of the world, that frank and gallant bearing, the self-confidence and self-respect, which are among the best passports to professional eminence. For the military profession Erskine professed no enthusiasm, though he would talk with some exultation of having handled a musket. The duties of parade and military evolutions, the monotony of the camp and the barrack-room, presented too narrow a sphere for his talents, especially when cabined and confined in the quarters of a petty island. On the return of the regiment in 1772, he mixed much with the literary coteries of the metropolis, and essayed authorship. "I saw," said Jeremy Bentham, "a letter written by Erskine, when he was an officer in the army—it complained of insufficient pay. That letter was characterised by something different from common writing, though it had many defects, of which he afterwards got rid. When the Fragment was published, Erskine sought me out. I met him sometimes (said the gossiping octogenarian) at Dr. Burton's. He was so shabbily dressed as to be quite remarkable. He was astonished when I told him I did not mean to practise. I remember his calling on me, and not finding me at home, he wrote his name with chalk on my door."

The volatile lieutenant at this time appears to have attracted the notice of the great autocrat, Dr. Johnson. "On April the 2d, 1772," writes Boswell, "I dined with Dr. Johnson at Sir Alexander Macdonald's, where was a young officer in the regimentals of the Scots Royals, who talked

* Brougham's Statesmen.

with a vivacity, fluency, and precision, so uncommon, that he attracted particular attention. Mr. Erskine (throughout this memoir we shall reject the prefix Mr., as an impertinent addition to such a national name) told us that when he was in the island of Minorca, he not only read prayers, but preached two sermons to the regiment." The editor, Mr. Croker, has added in a note, "Lord Erskine was fond of this anecdote. He told it to the editor the first time that he had the honour of being in his company, and often repeated it with an observation that he had been a sailor and a soldier, was a lawyer and a parson. The latter, he affected to think the greatest of his efforts, and, to support that opinion, would quote the prayer for the clergy in the Liturgy, from the expression of which he would (in no commendable spirit of jocularity) infer, that the enlightening them was one of the greatest marvels that could be worked." But this was in later days, when Lord Erskine loved to multiply the echoes of fame, and the speedy publication of a work was foreshadowed, which should startle all readers by its title-page, "Sermons preached on Ship-board and in the Camp, by the Right Honourable Thomas Lord Erskine, late Lord High Chancellor," thus bearing under one hood the character of sailor, soldier, lawyer, peer, and divine.

The cause of his second change has been variously ascribed — to the persuasions of his mother, a lady of excellent discernment — to the admiration called forth by the exercise of his talents in conversation and debate — to the "res angusta domi," and the claims of an increasing family — and, lastly, to the ennui produced by a desultory course of life, which his occasional pamphlets on the abuses of the army could not furnish sufficient occupation to remove. To his happy determination the whole of these causes with combined force probably contributed; the success of his brother Henry at the Scottish bar, of which he was for many years the grace and ornament, affording also a felicitous precedent. "At the house of Admiral Walsingham," says Cradock, "I first met with Erskine and Sheridan, and it was there the scheme was laid that the former should exchange the army for the law; and in consequence our excellent friend, Mr. Hinchcliffe, was

applied to, who kindly received him at Trinity Lodge, and obtained for him a nobleman's degree. He was now twenty-six, and to save further loss of time entered his name on the boards of Trinity, Cambridge, as fellow-commoner, and kept terms simultaneously as student at Lincoln's Inn. His sole object in taking a bachelor's degree being to dispense with two out of the five years' noviciate, according to the then regulations of the inns of court, he did not enter the senate-house for honours, and confined his attempts at university distinction to the gaining a college prize for a declamation on the Revolution of 1688. To this little triumph Erskine reverted with complacency when defending Paine. 'I was formerly called upon, under the discipline of a college, to maintain these truths, and was rewarded for being thought to have successfully maintained, that our present constitution was by no means a remnant of Saxon liberty, nor any other institution of liberty, but the pure consequence of the oppression of the Norman tenures, which, spreading the spirit of freedom from one end of the kingdom to the other, enabled our brave fathers not to reconquer, but for the first time to obtain, those privileges, which are the inalienable inheritance of all mankind.'"

His apostrophe "To the College Barber," a parody on Gray's Ode, "Ruin seize thee ruthless King," forms, however, a better specimen of his peculiar, lively talent, and will better repay perusal than this grave, and somewhat pedantic, exercise.

During the intervals of his residence at college, Erskine studied in the chambers of Mr. Justice Buller, then practising as a special pleader, and afterwards with Mr. Wood, a lawyer in the strictest sense of the term, under whom he continued to imbibe black letter for a year after his call to the bar. He had taken lodgings in Kentish Town, and would occasionally call for his wife at the house of a connexion, who kept a glass shop in Fleet Ditch, and used to talk of him as "Our Tammy."* He was a constant visiter at the villa of Mr. Reynolds, an

* For this and many personal anecdotes of Erskine and other judges, the author has to thank Mr. Pensam, the friend, and Secretary of Bankrupts, of the late Lord Eldon.

eminent solicitor, near Bromley, in Kent, whose son, the noted dramatist, in his "Life and Times," has given the following history of their guest: — "The young student resided in small lodgings near Hampstead, and openly avowed that he lived on cow beef, because he could not afford any of a superior quality, dressed shabbily, expressed the greatest gratitude to Mr. Harris for occasional free admissions to Covent Garden, and used boastingly to exclaim to my father, 'Thank fortune! out of my own family I don't know a lord!'"

But the end of difficulties and privations was at hand. Borne with the heroism of a light heart, they had tended rather to sustain than to subdue his exertions. In Trinity term, 1778, being then in his twenty-ninth year, the very best age for adventuring the legal profession, Erskine was called to the bar by the Society of Lincoln's Inn, just before the commencement of the long vacation, and immediately on its close saw a long vista of wealth and fame opening before him. But the story of his success has been too graphically told by himself to admit another narrative. "It was at the King of Clubs," says Adair*, "that I heard Erskine detail his early professional life. His tale is an instructive exemplification of those golden opportunities, which occur but rarely in human affairs. Yet, though what is vulgarly called luck had its share in urging along his most rapid and prosperous career, never was chance so well seconded by great talent, by chivalrous zeal, and proud integrity of heart and conduct."

"I had scarcely a shilling in my pocket when I got my first retainer. It was sent me by a Captain Baillie of the navy, who held an office at the Board of Greenwich Hospital, and I was to show cause in the Michaelmas term against a rule that had been obtained in the preceding term, calling on him to show cause why a criminal information for a libel reflecting on Lord Sandwich's conduct as governor of that charity should not be filed against him. I had met, during the long vacation, this Captain Baillie at a friend's table, and after dinner I expressed myself with some warmth, probably with some eloquence, on the corruption of Lord Sandwich as

* Clubs of London.

First Lord of the Admiralty, and then adverted to the scandalous practices imputed to him with regard to Greenwich Hospital. Baillie nudged the person who sat next to him, and asked who I was. Being told that I had just been called to the bar, and had been formerly in the navy, Baillie exclaimed with an oath, 'Then I'll have him for my counsel!' I trudged down to Westminster Hall when I got the brief, and being the junior of five, who would be heard before me, never dreamt that the court would hear me at all. The argument came on. Dunning, Bearcroft, Wallace, Bower, Hargrave, were all heard at considerable length, and I was to follow. Hargrave was long-winded, and tired the Court. It was a bad omen; but, as my good fortune would have it, he was afflicted with the strangury, and was obliged to retire once or twice in the course of his argument. This protracted the cause so long, that, when he had finished, Lord Mansfield said that the remaining counsel should be heard the next morning. This was exactly what I wished. I had the whole night to arrange in my chambers what I had to say the next morning, and I took the court with their faculties awake and freshened, succeeded quite to my own satisfaction (sometimes the surest proof that you have satisfied others), and, as I marched along the Hall after the rising of the judges, the attorneys flocked around me with their retainers. I have since flourished, but I have always blessed God for the providential strangury of poor Hargrave."

Erskine related this anecdote with those raptures of retrospection, which are among the richest luxuries of minds that have triumphed over fortune. His pleading for Captain Baillie will be long remembered as a splendid monument of his eloquence, which never rose to loftier heights than in the exposure of oppression and injustice, and in dragging public corruption to shame and infamy. It was a long struggle against the court, and against Lord Mansfield in particular, who once or twice exhorted him to moderate his language, but interposed with his usual mildness and urbanity. He went on without abating one jot of his vehemence, and, though a young man who had never heard the sound of his own voice before in a court of law, he astonished the whole

bar and the auditory by his intrepidity and firmness. The case was indeed one well calculated to call forth the youthful energies of the high-spirited advocate, and to "awaken his dormant thunder."

Captain Baillie, then Lieutenant-governor of Greenwich Hospital, having detected various abuses in the administration of that national charity, presented several petitions to the directors and governors, and (failing in his humane object) to the Lords of the Admiralty, with a prayer for inquiry and redress. He printed and circulated a statement of the case among the general governors of the hospital, animadverting with much severity upon the introduction of landsmen into the hospital, and insinuating that they had been placed there to serve the electioneering purposes of Lord Sandwich. Indignant at these charges, the Board of Admiralty suspended the adventurous captain; and certain officers of the establishment, whose conduct had been the subject of his invective, were hardy enough to move the Queen's Bench for a criminal information. This audacity on their part excited a burst of vituperation from the young and enthusiastic orator. "That such wretches should escape chains and a dungeon, is a reproach to humanity and to all order and government, but that they should become prosecutors, is a degree of effrontery, that would not be believed by any man, who did not accustom himself to observe the shameless scenes, which the shameless age we live in is every day producing. Far different was the treatment his client met with from the seamen. They surrounded his apartments, and testified their feelings by acclamations which sailors never bestow, but on men who deserve them."

The rule was discharged, with a general concurrence of opinion that Erskine's happy hardihood had insured the result. The judge's displeasure at the freshman's boldness was probably modified by his aristocratic birth and connexions. His bearding the First Lord of the Admiralty, and persisting to drag him before the court in defiance of Lord Mansfield, might not have been tolerated in a tyro of less pretension; and even had the spirit of the advocate persisted in his license of remark, there would have ensued an appear-

ance of altercation with the Bench, most fatal to his interests in the fears of wary attorneys.

His naval education and successful *début* soon afforded to Erskine the opportunity for another triumph — the defence of Admiral Keppel. This parlour officer, better adapted for campaigns at the west-end of London than for braving the battle and the storm, had been brought to a court-martial on the accusation of Sir Hugh Palliser, on grave charges of incapacity and misconduct. He was accused of negligently performing the duty imposed on him — of not doing all in his power to burn, sink, and destroy the French fleet — of putting his fleet in a disgraceful position, which carried the appearance of flight, and of tarnishing the honour of the British flag.* When, however, Lord Longford, one of the captains, was asked to name any instance of negligent conduct, he replied, "I can state no such instance to the court, for I know of none;" and withdrew amid the acclamations of the audience. The defence was managed with much tact. When the first master of a vessel had been examined, Admiral Keppel declined to cross-examine. "Mr. President, as I shall not condescend to put the measure of my conduct as commander of a fleet on the opinion of a master of a ship, I shall not ask the witness any question."

The counsel originally retained, Dunning and Lee, were wholly ignorant of those sea phrases, without some knowledge of which the case was in a great degree unintelligible, and Dunning recommended his young friend as eminently qualified for the task. The powers of a counsel before a court-martial are restricted within narrow bounds. He has neither the privilege of addressing the court, nor of putting any questions to the witnesses. But Erskine did all that could be done, in the full and admirable defence which he wrote out for Admiral Keppel. To prepare himself for the task he personally examined all the captains in the fleet. The speech was highly applauded for its tone of eloquent sensibility, and indignant pathos.

"After forty years spent in the service of my country, little did I think of being brought to a court-martial to

* Lord Nelson condemned his conduct. When appointed to the command, he said, "I will not lead my fleet as Keppel did." — *Nelson Despatches*, vol. v.

answer to charges of misconduct, negligence in the performance of duty, and tarnishing the honour of the British navy. These charges, sir, have been advanced by my accuser. Whether he has succeeded in proving them or not, the court will determine. Before he brought me to a trial, it would have been candid in him to have given vent to his thoughts, and not, by a deceptive show of kindness, to lead me into the mistake of supposing a friend in the man who was my enemy in his heart, and was shortly to be my accuser. Yet, sir, after all my misconduct, after so much negligence in the performance of duty, and after tarnishing so deeply the honour of the British navy, my accuser made no scruple to sail a second time with the man who had been the betrayer of his country. Nay, during the time we were on shore, he corresponded with me on terms of friendship; and even in his letters he approved of what had been done — of the part which he now condemns, and of the very negligent misconduct, which has since been so offensive in his eyes. Such behaviour, sir, on the part of my accuser, gave me little reason to apprehend an accusation from him. Nor had I any reason to suppose that the state would criminate me. When I returned, his Majesty received me with the greatest applause. Even the First Lord of the Admiralty gave his flattering testimony to the rectitude of my conduct, and seemed, with vast sincerity, to applaud my zeal for the service. Yet, in the moment of approbation, it seems as if a scheme was concerting against my life; for, without any previous notice, five articles of a charge were exhibited against me by Sir Hugh Palliser, who, most unfortunately for his cause, lay himself under an imputation for disobedience of orders, at the very time when he accused me of negligence. This, to be sure, was a very ingenious mode of getting the start of me. An accusation exhibited against a commander-in-chief might draw off the public attention for neglect of duty in an inferior officer. I could almost wish, in pity to my accuser, that appearances were not so strong against him. The trial has left my accuser without excuse, and he now cuts that sort of figure which, I trust in God, all accusers of innocence will ever exhibit! As to this court, I entreat you, gentlemen, who compose it, to recollect that you sit here as a

court of honour, as well as a court of justice; and I now stand before you, not merely to save my life, but for a purpose of infinitely greater moment — to clear my fame."

The close of the admiral's speech was plain, pointed, and severe.

"My conscience is perfectly clear — I have no secret machination, no dark contrivance, to answer for. My heart does not reproach me. As to my enemies, I would not wish the greatest enemy I have in the world to be afflicted with so heavy a punishment, as my accuser's conscience."

On the finishing of this speech, the hall resounded with shouts of applause. Owing to the unpopularity of government, and the fickle nature of popular favour, Admiral Keppel was as much the idol, as Admiral Byng had been the martyr, of the people. He was surrounded, during the investigation, by the leaders of opposition, Fox and Burke, the dukes of Cumberland, Bolton, and Richmond, and other nobles, and troops of friends, who were permitted, during the whole trial, to indulge in unseemly interruptions — to clap or hiss, as the questions asked, and the answer of witnesses accorded with their sentiments of partiality to the prisoner, or dislike to the prosecutor.*

Sir Hugh Palliser wrote to Lord Sandwich, to complain that his life was in danger, and that the court was grossly partial: "From the beginning every thing has been heard which was offered by the accused at any time, and almost every thing that I have offered has been refused."

A case so heard could have but one issue. Erskine's client being honourably acquitted, as much by the skill of the apology and partiality of the tribunal as the merits of his case, evinced his gratitude in the munificent gift of a bank-note for 1000*l.*

Erskine hastened in high glee to his friend Reynolds to display this epitome of wealth, and exclaimed with natural triumph, "Voila the nonsuit of cow beef, my good friends!"

The correspondence between the admiral and his client reflect honour on both.

"My dear Sir, "Audley Square, Feb. 23. 1775.

"Do me the favour to accept the enclosed notes †, as an ac-

* Hunt's Life of Sir H. Palliser. † Two bank notes of 500*l.* each.

knowledgment of the zealous and indefatigable industry you have shown in the long and tedious course of my court-martial. It is to your unremitting labours, together with the assistance of Mr. Dunning and Mr. Lee, that I chiefly owe its having been attended with so honourable a conclusion. I shall be very happy, if I have been in any degree the means of furnishing you with opportunities of showing those talents, which only wanted to be made known to carry you to the summit of your profession. I shall ever rejoice in this commencement of a friendship which I hope daily to improve.

"I am, &c.

"A. KEPPEL."

Erskine called in Audley Square to answer this letter in person; but not finding Admiral Keppel at home, he wrote the following note in the porter's hall: —

"Audley Square, Tuesday afternoon.

"You must no doubt, my dear Sir, have been very much surprised at receiving no answer to your most generous letter, but, I trust, you are well enough acquainted with my temper and feelings to find out the reason, and to pardon me; I was indeed altogether unable to answer it. I could not submit to do injustice to my gratitude and affection, and was therefore obliged to be silent, till I could wait upon you in person; and having missed you, must be silent still. I shall, therefore, only say, that the generous present you have sent me is out of all kind of bounds and measure, even if the occasion had afforded me an opportunity of rendering them; how much the more when your own ability and the absurdity of the occasion wholly disappointed my zeal. At all events, the honour of attending Admiral Keppel would have been in itself a most ample reward — an honour which, whatever my future fortunes may be, I shall ever consider as the brightest and happiest in my life, and which my children's children will hereafter claim as an inheritance.

"I do most sincerely pray God that every blessing may attend you, and that you may be spared for the protection of a country, which has proved itself worthy of protection. My heart must ever be with you. Adieu, my dear Sir, and believe me to be, with the greatest respect and regard,

"Your most grateful and affectionate

"humble servant,

"T. ERSKINE."

Another case to which he was recommended as well by his early renown, as by former professional associations, though curious and highly characteristic of his high-toned independence, is little known. His client, Lieutenant Bourne, had been convicted on two indictments for libel and assault on Sir James Wallace. Numerous affidavits were read, when Lieutenant Bourne was called up for judgment, from which it appeared that he had taken his passage for the West Indies in the ship of which Sir James Wallace was admiral; that he behaved himself fractiously on the voyage; that the tempers of both became exasperated by collision, till at length he had shouldered Sir James on the quarter-deck, refusing to give way an inch, that his superior officer might have room to pass. On this fresh provocation the admiral said to the next in command, — "Understand, sir, it is my order that Mr. Bourne does not walk on the same side of the deck with me." The order was rigorously enforced, and, on their return to England, Lieutenant Bourne sent him a challenge. The admiral refusing to grant a meeting, and alleging some former pusillanimous conduct as an excuse, Mr. Bourne, in a frenzy of passion, inserted a libel on his enemy in the newspapers, and meeting him in the streets at Bath, lifted up his cane, struck him forcibly, and inflicted a severe wound upon the head. In mitigation of punishment for this violent assault, Erskine urged every topic that ingenuity could suggest, and poured forth a vehement strain of lofty declamation: — "I build my principal hope of a mild sentence upon much more that will be secretly felt by the court, than may be decently expressed from the bar; for, although I am convinced that your Lordships have all those nice sensations which distinguish men of honour from the vulgar, and that your genuine feelings for the defendant must be rather compassion and approbation than resentment; yet I cannot address myself to your Lordships, sitting on that bench, and clothed in the robes of magistracy, in the same language by which I think I could insure your favour to my client in another place. It is, indeed, very unfortunate for the gentleman, whose cause I am defending, that your Lordships are bound, as judges of the law, to consider that as a crime in him against the society in

which he lived, which yet, if he had not committed, that very society would have expelled him, like a wretch, from its communion; and that you must speak to him the words of reproach and reprobation for doing that which, if he had not done, your Lordships would scorn to speak to him at all as private men. Surely, my Lords, this is a harsh and a singular situation. . . . . I profess to think with my worthy friend, who spoke before me, that the practice of private duelling, and all that behaviour which leads to it, is a high offence against the laws of God; and I agree with that great prince (Frederick II. of Prussia), that it is likewise destructive of good government amongst men; a practice certainly unknown to the most refined and heroic people which the revolutions of time and manners have produced in the world, and by which the most amiable man in society may be lost by an inglorious death, depending upon mere chance. But though I feel all this, as I think a Christian and a humane man ought to feel it, yet I am not ashamed to acknowledge that I would rather be pilloried by the court in every square in London, than obey the law of England, which I thus profess so highly to respect, in a case, where that custom, which I have reprobated, warned me that the public voice was in the other scale. My Lord, every man who hears me feels that so would he; for, without the respect and good opinion of the world we live in, no matter upon what foundation it is built, life itself is a worse imprisonment than any which the laws can inflict; and the closest dungeon, to which a court of justice can send an offender, is far better with the secret pity, and even approbation of those that send him there, than the range of the universe with the contempt and scorn of its inhabitants."

After reading voluminous affidavits to his client's character, Erskine continued: — "A man in possession of such a character as this, justly acquired, will not consent to sacrifice it to the pride of any man; it is a just and sacred pledge; and he to whom God in his providence has given it deserves every sort of reproach, if he parts with it in a light cause. . . . Unquestionably the captain may desire every officer, whose duty it is to walk the quarter-deck, to go to the top of the mast

of the ship; but he cannot do that without an adequate cause, and without subjecting himself to the disgrace and punishment of a court-martial. I have had the honour to sail with a man who is an honour to that profession; a gentleman, I believe, the most accomplished that this nation or world can produce, and who has the honour to be nearly allied to your Lordship. Under him I learned what idea ought to be entertained on this subject, and what respect ought to be paid to officers in all stations; and the result of what I saw there, joined with my own original feelings, is this—that, although I was placed on board his ship, to reverence him as my father, by the command of my own; and although at this hour I do reverence him in that character; yet I feel that if he had treated me in that manner, I should not have made Jamaica or Bath the limit of my resentments, but would have sought him through all created space, till he had answer made, and done me justice!... There are some injuries which even Christianity doth not call upon a man to forgive or to forget; because God, the author of Christianity, has not made our natures capable of forgiving or forgetting them.... I must plead for the infirmities of human nature, and beseech your Lordships once more to consider what the honour of an officer is; consider that, and say what punishment this gentleman deserves. You have before you a young military man, jealous, as he ought to be, of his fame and honour, treated with the grossest indignity by his superior officer, smothering his honest resentment as long as the superior duties of military service required that painful sacrifice; and after pursuing the man, who had dishonoured him, with a perseverance, certainly, in criminal opposition to the law, but in obedience to what I may, without offence even here, term generous infirmity in his nature, nourished by the long-established, though erroneous, customs of the world.... I rely with confidence upon the justice, the humanity, and the honour, of the court!"

Mr. Law, who appeared as counsel for Admiral Wallace, treated this novel vein of rhetoric, opened with so much intrepidity by the quondam naval officer, in a tone of rough displeasure:—"I think I shall be warranted in desiring

your Lordships to forget, for a little while, the laws of chivalry and the wild maxims of romance, with which the Court has been so liberally entertained to-day; and to return with me to the good old laws of England, and the wholesome correction they administer to such high-handed violence as this. ... If this quarter-deck order be such an insult, entailing on the person who suffers it such infamy as will warrant him, in the language of my learned friend, to hunt Sir James Wallace through all created space, I am sure my ideas on the subject are much too narrow, to enable me to comprehend the soreness and jealousy, which belong to the character of a man of honour." The officers of the different militia corps in England having signed a written testimonial to the propriety of Lieutenant Bourne's conduct, Mr. Law added, "I would not for the world's wealth have set my hand to that foul paper; I would not have condemned an officer in matters of discipline and honour, without hearing that officer, and knowing that he had no defence. Let these gentlemen feel as they may, their sentiments of honour and mine are widely different — I am not ashamed of my own." Mr. Law concluded with a striking antithesis: — "His countrymen cannot be so ungrateful as to forget Sir James Wallace — the enemies of his country have felt his bravery too deeply to do so."

The glories of this rhetorical field-day were not yet over. Mr. Justice Willes felt sufficiently elated by the occasion to trangress the reserve so becoming to the bench, and deliver a lecture on the code of honour, which, however salutary to the young, must have astonished the grave old lawyers. "Can such a violent blow be justified? No! Your counsel did not pretend to do it till some of them, from a meritorious zeal for your service, lost themselves in the wilds of chivalry, and adopted the romantic notions of knight-errants. And now I am come to that fairy-ground in which I mean to examine your conduct as a man of honour. If you thought your shaking your cane over Sir James Wallace at the bath not sufficient, as a man whose conduct was to be sanctified by the rules of honour, you might, when you met him in the streets, have flung your glove in his face, or have given him a touch on the arm, with a declaration that you meant to

strike him; instead of which you, in a most barbarous and ungentlemanlike manner, struck him in the cruel way I have before described!" The sentence was severe, but only adequate to the offence! That, for the assault, Lieutenant Bourne be imprisoned two years, and find sureties for seven years; and for the libel, that he pay a fine to the king of fifty pounds.

The eloquent appeal which Erskine made in defence of Lord George Gordon, his third great triumph in little more than a year—and what advocate but he was ever selected to defend a prisoner for high treason in the second year from his call to the bar? — has commanded, as it deserves, universal admiration. His emphatic oath, after commenting most indignantly on the witnesses for the crown, "By God! that man is a ruffian, who shall build on such slender foundations evidence of guilt," was a bold and novel figure, forged on the instant, but which drove conviction into all who heard it. This celebrated trial at the bar of the King's Bench, in February, 1781, is too well known to require more than a passing notice. Lord George Gordon, having been elected president of the Protestant Association, proceeded at the head of upwards of forty thousand persons to the House of Commons, to present their petition for a repeal of some indulgences lately conceded to the Roman Catholics. In this procession originated the fatal riots, and hence the charge of treason against their enthusiastic and misguided, but not malignant, chief. The following passages from Erskine's powerful peroration are selected to mark his independent character, and point attention to the bold defiance, which he scrupled not for a moment to hurl at the law officers of the crown.

"I have all along told you that the crown was aware it had no case of treason, without connecting the noble prisoner with consequences, which it was in some luck to find advocates to state, without proof to support it. I can only speak for myself, that small as my chance is (as times go) of ever arriving at that distinction, I would not accept the high office on the terms of being obliged to produce (as evidence of guilt) against a fellow-citizen, that which I have been witness to this day.... It is indeed astonishing to me that men can keep

the natural colour in their cheeks, when they ask for blood in such a case, even if the prisoner had made no defence. There was not even a walking-stick to be seen amongst the procession which he led. What, then, has produced this trial for high treason? What! but the inversion of all justice, by judging from consequences, instead of from causes and designs! What! but the artful manner in which the crown has endeavoured to blend the petitioners in a body, and the zeal with which an animated disposition conducted it, with the melancholy crimes that followed; crimes which the shameful indolence of our magistrates, which the total extinction of all police and all government suffered to be committed in broad day, in the delirium of drunkenness, by an unarmed banditti, without a head, without plan or object, and without a refuge from the instant gripe of justice: a banditti, with whom the associated Protestants and their president had no manner of connection, and whose cause they overturned, dishonoured, and ruined. How unchristian, then, is it to attempt, without evidence, to infect your imaginations, who are upon your oaths, dispassionately and disinterestedly, to try the offence of assembling a multitude with a petition to repeal a law, which has happened so often in all our memories before, by blending it with all the future catastrophe, on which every man's mind may be supposed to retain some degree of irritation? O fie! O fie! it is taking advantage of all the infirmities of our nature! Do they wish you, while you are listening to the evidence, to connect it with consequences in spite of reason and truth, to hang the millstone of prejudice round his innocent neck to sink him? If there be such men, may God forgive them for the attempt, and inspire you with fortitude and wisdom to do your duty to your fellow-citizens with calm, steady, reflecting minds.... You will then restore my innocent client to liberty, and me to that peace of mind, which, since the protection of that innocence in any part depended upon me, I have never known."

Such language might well startle all who heard it, for similar licence of remark had rarely, if ever, been adventured in that court before. The remarks with which the Solicitor-General commenced his reply prove how trenchant was the

blade which his assailant wielded, and what a deep wound it had inflicted. "If I was to believe, or if any man could believe, what has been very frequently, very boldly, very hardily asserted, I might be afraid of sharing in that blame and that censure, which, in a manner perfectly new in English courts of judicature, has been cast upon my learned friend as the author of this prosecution, as well as upon the witnesses who have appeared in the cause, and upon all who have had any thing to do with it; and, if the word of a gentleman, who has boldly, adventurously, and licentiously, inveighed against every man who has had any thing to do in the conduct of this cause, is to be taken against evidence, against reason, against law, I should have indeed a very terrible trial to undergo: I must fear very much for my reputation: I must fear the imputation of persecution, of cruelty, of an attempt to support an unjust and groundless persecution by shameful, ignominious evidence, for this is the result of frequent assertions, made with a boldness perfectly new to me in my short experience in English judicature, but which, however, makes no impression upon me. Though a learned gentleman at the bar shall tell me ten times a day to my face that I am a ruffian, I shall not think that I deserve it, because he says it; nor will any such abuse frighten me from doing the duty of an English advocate." Neither the matter nor manner of the crown-orator could subdue Erskine, who refused to retract, qualify, or explain away, one word that he had spoken.

Being retained, in his third year at the bar, by Mr. Carnan, the bookseller, to oppose a bill for continuing the monopoly of the Stationers' Company, he pleaded with a vigour and effect which might be vainly sought for in his later parliamentary efforts: —

"Mr. Carnan, the petitioner, had turned the current of his fortunes into a channel perfectly open to him in law, and which, when blocked up by usurpation, he had cleared away, at a great expense, by the decision of one of the highest courts in the kingdom. Possessed of a decree, founded, too, on a certificate from the judges of the common law, was it either weak or presumptuous in an Englishman to extend his

views that had thus obtained the broadest seal of justice? Sir, he did extend them with the same liberal spirit in which he began, he published twenty different kinds of almanacks, calculated for different meridians and latitudes, corrected the blunders of the lazy monopolists, and supported by the encouragement, which laudable industry is sure to meet with in a free country, he made that branch of trade his first and leading object; and I challenge the framer of this bill (even though he should happen to be at the head of his Majesty's government) to produce to the House a single instance of immorality, or of any mistake or uncertainty, or any one inconvenience arising to the public, from this general trade, which he had the merit of redeeming from a disgraceful and illegal monopoly. On the contrary, much useful learning has been communicated, a variety of convenient additions introduced, and many egregious errors and superstitions have been corrected. Under such circumstances I will not believe it possible, that parliament can deliver up the honest labours of a citizen of London to be damasked and made waste paper of (as this scandalous bill expresses it) by any man or body of men in the kingdom.

"And now, Mr. Speaker, I retire from your bar, I wish I could say with the confidence of having prevailed. If the wretched Company of Stationers had been my only opponents, my confidence had been perfect, indeed so perfect, that I should not have wasted ten minutes of your time on the subject; but should have left the bill to dissolve in its own weakness; but when I reflect that Oxford and Cambridge are suitors here, I own to you, I am alarmed, and I feel myself called upon to say something, which I know your indulgence will forgive. The House is filled with their most illustrious sons, who no doubt feel an involuntary zeal for the interest of their parent universities. Sir, it is an influence so natural and so honourable, that I trust there is no indecency in my hinting the possibility of its operation. Yet I persuade myself that these learned bodies have effectually defeated their own interests by the sentiments which their liberal sciences have disseminated amongst you:—their wise and learned institutions have erected in your minds the august image of

an enlightened statesman, who, trampling down all personal interests and affections, looks steadily forward to the great ends of public and private justice, unawed by authority and unbiassed by favour.

"It is from thence my hopes for my client revive. If the universities have lost an advantage, enjoyed contrary to law, and at the expense of sound policy and liberty, you will rejoice that the courts below have pronounced that wise and liberal judgment against them, and will not set the evil example of reversing it here. But you need not therefore forget that the universities have lost an advantage; and if it be a loss, that can be felt by bodies so liberally endowed, it may be repaired to them by the bounty of the crown, or by your own. It were much better that the people of England should pay ten thousand a year to each of them, than suffer them to enjoy one farthing at the expense of the ruin of a free citizen, or the monopoly of a free trade."

The hopes thus bravely expressed were not disappointed. He enjoyed the signal triumph of seeing the bill rejected by a majority of forty-five, though ushered in under the auspices of Lord North, then Chancellor of the University of Oxford, and of learning that his brother-in-law, brought down expressly to vote for the second reading, had voted against it, being unable to resist the strong sense of its injustice which the counsel's speech had induced.

The same fearless temperament and commanding genius, which always seized the exact moment for resistance, and clothed the best reasons in the most attractive language, wrought a still higher achievement to the cause of constitutional law, in the celebrated trial of the Rev. Dr. Shipley, dean of St. Asaph, for publishing a seditious libel. The work was unimportant in itself, a dull and tedious dialogue, written by Sir William Jones, then a judge in India, between a farmer and a gentleman on the duty of resistance, and on the evils of the representative system. But the principle, which his eloquent advocate maintained, and at length succeeded in establishing, is of vital efficacy, that the fact of publication should not alone be submitted to a jury, but the intent of publication also, — that the jurors, and not the presiding

judge, should decide on the work published, whether libellous or not. To contend for such a privilege for the twelve honest men in the box was deemed a hopeless attempt of legal knight-errantry. Bearcroft, who led for the prosecution, asserted boldly the doctrine of the time: that libel or no libel was a question of law for the court, and that the adverbs and epithets were not for gentlemen of the jury. "At the hazard of any libel that any set of men may choose to throw at my head," continued the conservative lawyer, "I have no difficulty to say that the man, who maintains this proposition — that every man at twenty-one has a right by this constitution to choose his representatives in parliament, is either a fool or a knave. If he believes it himself, he is an idiot; if he does not, he is a dishonest man. This country would be worse than a Polish diet, if that scheme were to take effect. These ideas would not be so extravagant, perhaps, if the kingdom of England consisted of no more subjects than a district ten times as large, inhabited by a few Indians half civilised. You would do well, perhaps, to have such a nation sit in a ring and give their opinions."

Erskine, after a vehement denial of his friend's law, volunteered his own concurrence in the obnoxious pamphlet. "I desire to be considered the fellow-criminal of this defendant, if by your verdict he should be found one, by publishing, in avowed speaking, my hearty approbation of every sentiment contained in this little book." Mr. Justice Buller, in summing up, denounced, with all the weight of authority, the legal position contended for by the dauntless advocate: "You have been pressed very much by the counsel, and so have I, to give an opinion upon the question, whether this treatise is or is not a libel. It is my happiness to find the law so well settled, and so fully, that it is impossible for any man, who means well, to doubt about it."

In the angry discussion which ensued between the bench and the bar on the finding of the jury, "Guilty of publishing only," the judge, as we have seen*, displayed more warmth than discretion, and the advocate, in defying the threat of

* Life of Mr. Justice Buller.

committal, rendered his profession excellent service, not more by the courage of the resistance, than by the happy selection of the time and the exact propriety of his manner. The temerity of his old master quailed beneath his rebuke, and the menace died away unheeded. Erskine's argument on the motion for a new trial on the ground of misdirection, that Judge Buller had submitted as the only question to the jury the fact of publication, has been considered the most perfect union of reasoning and eloquence ever delivered in Westminster Hall, and was described by Fox, as a speech so luminous and so convincing, that it wanted in opposition to it not a man but a giant. It was addressed to judges, whose minds he knew to be so firmly prepossessed against him, as to preclude even the most distant expectation of success, and met with the most disheartening of all receptions, an indulgent indifference. "That revered magistrate, Lord Mansfield, treated me," said Erskine, "not with contempt indeed, for of that his nature was incapable, but he put me aside with indulgence, as you do a child, when it is lisping its prattle out of season. Such a judicial practice, the judges have decided on the precise point, from the Revolution down to the present day, was not to be shaken by arguments of general theory, or popular declamation." But it was shaken into fragments by that very discourse, whose argument, so contumeliously treated, is declared by a subsequent act of parliament to have been the law.

This was 'the last keystone that made the arch' of Erskine's early fortune. With a just appreciation of his own powers, he had, in his fourth year, altogether refused to accept junior briefs at Nisi Prius, and was sought for with such avidity that he soon commanded the distinction of a silk gown. To prevent his seniors from being thrown out of professional business on the circuit and at Guildhall, he was presented by Lord Loughborough, at the instance of Lord Mansfield, with a patent of precedency in 1783, though he had not yet attained the statutable period of five years, the *sine quâ non* of modern legislation. It was arranged that he should take precedence of Piggot, considerably his

senior in standing, and Piggot lost caste with the bar by acceeding to his proposal.

He was probably despised by Erskine for this voluntary humiliation, and to a feeling of contempt may be ascribed that bitterness against the pusillanimous senior, which excited general surprise.

Erskine, we are told, hardly ever showed this kind of disposition to evil in any other case. In the instance of Sir Arthur Piggot, he showed it unremittingly and offensively. It is the only unamiable trait in his attractive character.*

Mr. Scott, with a more fitting pride, declined to take rank as junior to Erskine, who had been called later than himself, and had his claim to precedence allowed in the final distribution of honours. None who saw and heard Erskine were at a loss to account for this rapidity of success. The magic of his eloquence can only be fully appreciated by those who are acquainted with, what has been well termed, its music and its statuary — the grace of his person, and the perfectness of his elocution. The following admirable tribute has been paid to their power by a first-rate judge of eloquence, Lord Brougham — more eloquent in the senate, and occasionally almost as eloquent at the forum †: —

"Nor let it be deemed trivial, or beneath the historian's province, to mark that noble figure, every look of whose countenance is expressive, every motion of whose form graceful, an eye that sparkles and pierces, and almost assures victory, while it speaks audience ere the tongue. Juries have declared that they felt it impossible to remove their looks from him, when he had riveted, and, as it were, fascinated them by his first glance; and it used to be a common remark among men, who observed his motions, that they resembled those of a blood-horse, as light, as limber, as much betokening strength and speed, as free from all gross superfluity or incumbrance. Then hear his voice of surpassing sweetness, clear, flexible, strong, exquisitely fitted to strains of serious earnestness, deficient in compass indeed, and much less fitted to express indignation, or even scorn, than

* Law Review. † History of Statesmen.

pathos, but wholly free from harshness or monotony. All these, however, and even his chaste, dignified, and appropriate action, were very small parts of this wonderful advocate's excellence. He had a thorough knowledge of men, of their passions, and their feelings — he knew every avenue to the heart, and could at will make all it chords vibrate to his touch. His fancy, though never playful in public, where he had his whole faculties under the most severe control, was lively and brilliant; when he gave it vent and scope it was eminently sportive, but while representing his client it was wholly subservient to that, in which his whole soul was wrapped up, and to which each faculty of body and of mind was subdued — the success of the cause. His argumentative powers were of the highest order, clear in his statements, close in his applications, unwearied, and never to be diverted in his deductions, with a quick and sure perception of his point, and undeviating in the pursuit of whatever established it; endued with a nice discernment of the relative importance and weight of different arguments, and the faculty of assigning to each its proper place, so as to bring forward the main body of the reasoning in bold relief, and with its full breadth, and not weaken its effects by distracting and disturbing the attention of the audience among lesser particulars. His understanding was eminently legal; though he had never made himself a great lawyer, yet he could deliver a purely legal argument with the most perfect success, and his familiarity with all the ordinary matters of his profession was abundantly sufficient for the purposes of the forum. His memory was accurate, and retentive in an extraordinary degree, nor did he ever during the trial of a cause forget any matter, how trifling soever, that belonged to it. His presence of mind was perfect in action, that is, before the jury, when a line is to be taken in the instant, and a question risked to a witness, or a topic chosen with the tribunal, on which the whole fate of the cause may turn. No man made fewer mistakes, none left so few advantages unimproved; before none was it so dangerous for an adversary to slumber and be off his guard, for he was ever broad awake himself, and was as adventurous as he was skilful, and as apt to take advantage

of any the least opening, as he was cautious to leave none in his own battle. But to all these qualities he joined that fire, that spirit, that courage, which gave vigour and direction to the whole, and bore down all resistance. No man, with all his address and prudence, ever adventured upon more bold figures, and they were uniformly successful, for his imagination was vigorous enough to sustain any flight: his taste was correct, and even severe, and his execution felicitous in the highest degree."

"His action," says another eye-witness*, "was always appropriate, chaste, easy, natural, in accordance with his slender and finely-proportioned figure and just stature. His features regular, prepossessing, as well as harmonious, bespoke him of no vulgar extraction. The tones of his voice, though sharp, were full, destitute of any tinge of Scottish accent, and adequate to every emergency, almost scientifically modulated to the occasion. His movements were rapid, according to the character of his mind, a peculiarity shown in his hand-writing. From their characteristic autographs, it would appear that Dunning's was a pretty neat hand; Lord Eldon's a beautiful clear hand, indicating a clear head; Erskine's professional, but quick, as if from a quick perception."

With those who met him at Westminster or on circuit, (such was the strength of his constitution, that he never absented himself from the courts for a single day during twenty-eight years,) the charm of his oratory was effaced by the playful grace of his manner. His gaiety of temper and unruffled urbanity, which clothed as in a court-dress his wit and repartee, made him a favourite with all classes; popular alike with the grave judge and the mercurial tyro. The rugged Lord Kenyon was strongly opposed to his politics; the colour and complexion of their minds were wholly different; they came often into collision, and their sentiments upon the judicial questions, which so frequently arose in cases of libel and sedition, in a period of bitter intestine division, were as far asunder as the poles. Yet, even in those bad-humoured times, that venerable lawyer spoke well of Erskine; and if any one

* Espinasse.

could rightly take offence at his tone and manner, which were occasionally indignant even to vehemence, it was the old judge, from whose eyes the tears would sometimes start, after some little bickering had arisen between them. Mr. Adair relates a conversation he had with the Chief Justice concerning Erskine. "I know not what perversity of feeling came across me, nor do I recollect precisely what I objected to that eminent man, but it was a repetition of some of the ill-tempered animadversions of Westminster Hall, that were then current. 'Young man,' said the Chief Justice, 'what you have mentioned is most probably unfounded, but these things, even if they were true, are only spots in the sun!' As for his egotism, which they are so fond of laying to his charge, they would talk of themselves as much as Mr. Erskine does of himself, if they had the same right to do so. His nonsense would set up half-a-dozen of such men as run him down." In his turn, Erskine was grateful and affectionate to Lord Kenyon, although not a little disposed occasionally to circulate epigrams and indulge in pleasantries upon the eccentricities of that honest magistrate, whose dress in particular was always considered fair game. His co-mates on the Bench formed not unfrequently the subject of his jest, and these little squibs flew about the barristers' benches, and lighted up with laughter the sombre precincts of the King's Bench.

One or two of them deserve to be repeated. Mr. Justice Ashurst was remarkable for a long, lanky visage, not unlike that which Cervantes has sketched as Don Quixote's. Erskine scribbled this ludicrous couplet on a slip of paper: —

"Judge Ashurst, with his lantern jaws,
Throws light upon the English laws."

The other was a Latin distich, more envenomed than his wont, upon Mr. Justice Grose: —

"Qualis sit Grotius judex, uno accipe versu,
Exclamat, dubitat, stridet, balbutit, et—errat."

Erskine would affect to discover a striking likeness between the yellow lion on the royal arms, and the jaundiced complexion of Mr. Justice Grose, and would descant on the

advantage of the long vacation, when, on resuming his seat, the judicial resemblance of colour seemed still more complete.* With these, and a thousand passing gibes, the idol of his court delighted the idle barristers, who were never tired of crowding round him. The lawyer of the people was the most unassuming man living, and in the intervals of professional toil the most amusing; without a particle of pride, yet with every apology for being proud, and, though in hourly conflict, free from asperity. Of the manner in which his witticisms were received during play-hours, and of his overflowing good nature, Dr. Dibden gives, from his own experience, the following testimony: — "Cocked hats and ruffles, with satin small-clothes and silk stockings, at this time, constituted the usual evening dress. Erskine, though a good deal shorter than his brethren, somehow always seemed to take the lead both in pace and in discourse, and shouts of laughter would frequently follow his dicta. Among the surrounding promenaders, he and the one-armed Mingay seemed to be the main objects of attraction. Towards evening it was the fashion for the leading counsel to promenade during the summer in the Temple Gardens, and I usually formed one in the thronging mall of loungers and spectators. I had analysed Blackstone, and wished to publish it, under a dedication to Mr. Erskine. Having requested the favour of an interview, he received me graciously at breakfast before nine, attired in the smart dress of the times, a dark green coat, scarlet waistcoat, and silk breeches. He left his coffee, stood the whole time looking at the chart I had had cut in copper, and appeared much gratified. On leaving him, a chariot and four drew up to wheel him to some provincial town on a special retainer. He was then coining money as fast as his chariot wheels rolled along."

"Adequately to estimate what Erskine was at this period," says a brother barrister, "we must forget all that the English bar has produced after him. They will afford no criterion by which he can be appreciated. They are all of inferior clay, the mere sweepings of the Hall, in comparison. Nor is it

* Note-book by Espinasse.

easy to form any tolerable idea of him, but by having seen him from day to day, from year to year, in the prime and manhood of his intellect, running with graceful facility through the chaos of briefs before him; it is only by that personal experience that it is possible to form any notion of the admirable versatility with which he glided from one cause to another, the irony, the humour, the good nature with which he laughed down the adverse cause, and the vehemence and spirit with which he sustained his own."

"I never saw him grave," is the testimony of Espinasse, "but with a constant flow of animal spirits, he enlivened those who surrounded him with whimsical conceits and jokes on what was passing. I had a full share of his *jeux d'esprit*, as my place in court was directly at his back." Erskine observed, how much confidence in speaking was acquired from habit and frequent employment. "I don't find it so," said Lamb, "for though I have a good share of business, I don't find my confidence increased; rather the contrary." "Why," replied Erskine, "it is nothing wonderful that a Lamb should grow sheepish." His squibs in verse were full of wit, though sometimes too broad. A witness was put into the box, who travelled to get orders. This description of persons go indiscriminately by the name of riders and travellers, but most affect the latter. "You are, I understand, a rider?" "A traveller, sir," was the reply. "Pray," said Erskine, "are you addicted to that failing usually imputed to travellers?" Another of the fraternity having baffled his cross-examination, he suddenly remarked, "You were born and bred in Manchester, I perceive." The witness admitted that it was so. "I knew it," said Erskine carelessly, "from the absurd tie of your neckcloth." The traveller's weak point was touched, for he fancied that his dress had been perfect; and the counsel gained his object — the man's presence of mind was gone.

When induced to make a personal observation on a witness, Erskine divested it of asperity by a tone of jest and good humour. In a cause at Guildhall, brought to recover the value of a quantity of whalebone, a witness was called of impenetrable stupidity. There are two descriptions of whale-

bone, of different value, the long and the thick. The defence turned on the quality delivered, that an inferior article had been charged at the price of the best. A witness for the defence baffled every attempt at explanation by his dulness. He confounded thick whalebone with long in such a manner that Erskine was forced to give it up. "Why, man, you don't seem to know the difference between what is thick and what is long. Now, I'll tell you the difference. You are a thick-headed fellow, and you are not a long-headed one!"

In a cause at Guildhall, Mingay spoke of one Bolt, a wharfinger on the Thames, who loved litigation, and whose name regularly appeared as plaintiff or defendant in the cause-paper of the sittings after term, in very harsh terms, for his dishonest and litigious spirit. "Gentlemen," replied Erskine, "the counsel has taken unwarrantable liberties with my client's good name. He is so remarkably of an opposite character, that he goes by the name of Bolt-upright." This was all invention.

In this mirthful spirit Erskine loved to play occasionally with the partialities of Lord Kenyon. When any matter of law was started at a trial, the Chief Justice pricked up his ears, and prepared his note-book to take down the point with great formality. In an action for assault, which was tried before him at Guildhall, the plaintiff, a man of great size and bodily power, kept a public-house of some notoriety, called "The Cock," at Temple Bar. It was a house much frequented by country attornies. A spruce little member of that profession came into the public room one evening, booted and spurred as if just off a journey. He took his seat in a box, but soon became so noisy and troublesome that the other guests wished to have him turned out, and called on the landlord to do so. The lawyer demurred, and when pressed, assumed an attitude of defence. The landlord, acting under the authority of a habeas corpus of his own issuing, took possession of the person of his puny antagonist, by catching the little man up in his arms, and bearing him in triumph towards the door. The publican's embrace, which resembled the friendly hug of a bear, roused all the indignant energies of the lawyer; and, being furnished with no weapons of defence

except his spurs, he sprawled, kicked, and spurred so violently that the knees and shins of the host of the Cock were covered with blood. For this assault the action was brought, and the defendant pleaded that plaintiff had made the first assault on him, by forcibly taking him in his arms and turning him out of doors. Erskine defended him: he described the combat in the most ludicrous terms, and, with assumed gravity, appealed to the jury if instinct had not pointed out to every animal the best means of its defence; that his client had no weapon of any sort to oppose to the violence of the plaintiff, except his spurs, which he had therefore lawfully used for self-defence. The turn which Erskine's manner of treating it gave to the case, caused much laughter in the court, and he was not disposed to stop it. To the law cited on the other side, he said he would oppose a decisive authority from a book of long standing, and entitled to the highest credit. Lord Kenyon, expecting that some text book or reporter was going to be cited, took up his pen, and put himself into the attitude for taking down the point. "From what authority, Mr. Erskine?" said the Chief Justice. "From Gulliver's Travels, my Lord," was the reply. The whimsical contrast in appearance of plaintiff and defendant then on the floor, presented the burlesque representation of Gulliver dandling in the arms of his Brobdignag friend.*

No other barrister would have ventured to trifle so far with the gravity of the Chief; but he knew that his anger was sheathed against himself, and that, if he did shake the head reproachfully, it was in good humour at the jest. The licensed joker of the court, the petted school-boy of the robing room, the gay oracle of consultation, — he would follow his whim further than barristers in general feel inclined to pursue it, and would sport with that privileged class, the attornies. He was aware that they could not dispense with his talents of advocacy, and that, whether offended with his witticisms or not, the principal anxiety of each on the morrow would be, who should be first with his retainer. "He attached too little consequence," says Espinasse, "to consult-

* Espinasse.

ations: he relied solely on himself. As they always took place in the evening, and his return from court had not many hours preceded them, he had very rarely read his brief, but reserved it for perusal at an early hour in the morning. He therefore sought to relieve his mind from the fatigues of the day by unbending it in conversation, or diverting it to something which amused him, but which required little thought. I have often observed the disappointment of his clients, who attended his consultations, expecting to hear their cases canvassed with some degree of solemnity and attention, to find that he had not read a line of his brief, but amused himself with talking upon subjects either trifling, or wholly unconnected with them. I recollect accompanying a client to a consultation at his house in Serjeants' Inn. We found on the table thirty or forty phial bottles, in each of which was stuck a cutting of geranium of different kinds. Our client was all anxiety for the appearance of Erskine, and full of impatience for the commencement of the consultation, sure that he should hear the merits of his case and the objections to it accurately gone into, and the law of it canvassed and well considered. When Erskine entered the room, what was his disappointment at hearing the first words which he uttered: Erskine — 'Do you know how many kinds of geraniums there are?' 'Not I, truly,' was my reply. 'There are above a hundred,' he said. He then proceeded with a detail and description of the different sorts, and indulged in a discussion of their relative beauties and merits. This lecture on geraniums evidently disconcerted our client. He listened with patient anxiety till he had finished, hoping then to hear something about his cause, when he heard him conclude: Erskine — 'Now state the case, as I have had no time to read my brief.' With my statement of it the consultation ended. But our client's disappointment of the evening he found amply compensated by Erskine's exertions on the following morning, when he heard every point of his case put with accuracy and enforced by eloquence. To his consultations, in fact, no feature of deliberation belonged. If in the course of them any thought struck him, he did not reserve the communication of it for a more fit occasion, but uttered it as it occurred, though

it broke in on the subject under discussion, and was wholly foreign to and unconnected with it. At a consultation, in which I was junior, Christie, the auctioneer — that very Christie who could expatiate on a riband as eloquently as on a Raphael — attended to give some information. In the middle of it Erskine exclaimed, 'Christie, I want a house in the neighbourhood of Ramsgate, have you got such a one to dispose of?' 'What kind of a house do you want?' inquired the auctioneer. Erskine described it. 'I have,' said Christie, 'the very thing that will suit you, and, what is more, I'll put you into it as Adam was put into Paradise, in a state of perfection.'

These playful humours the fortunate lawyer would sometimes carry to an excess, bordering on burlesque. He had a large and favourite dog, called Toss, which he had taught to sit upon a chair with his paws placed before him on the table. In that posture he would put an open book before it, with one paw placed on each side, and one of his bands tied round his neck. This ludicrous exhibition was presented to his clients, who came to attend his consultations. No one would have ventured on such a childish experiment, but one who felt that the indulgence of a trifling whim did not detract from the dignity of his professional character, and with the perfect assurance of a superior mind, that his clients could find no equal to him at the bar, or in fact do without him.

The auctioneering flourishes of this Christie once afforded Erskine a favourable opportunity for winning a verdict by dint of laughter from the jury. He was conducting a case for the plaintiff, in an action to recover the deposit money for an estate, which his client had credulously purchased on Christie's representation of its beauties. In one of those florid descriptions which abounded in all his advertisements, the house was stated as commanding an extensive and beautiful lawn, with a distant prospect of the Needles, and as having amongst its numerous conveniences an excellent billiard-room.

"To show you, gentlemen," said Erskine, "how egregiously my client has been deceived by the defendant's rhetoric, I will tell you what this exquisite and enchanting place actually turned out to be, when my client, who had paid the

deposit on the faith of Mr. Christie's advertisement, went down in the fond anticipations of his heart to this earthly paradise. When he got there, nothing was found to correspond to what he had too unwarily expected. There was a house, to be sure, and that is all—for it was nodding to its fall, and the very rats instinctively had quitted it. The building stood, it is true, in a commanding situation, for it commanded all the wind and rains of heaven. As for lawn, he could find nothing that deserved the name, unless it was a small yard, in which, with some contrivance, a washerwoman might hang half-a-dozen shirts. There was, however, a dirty lane that ran close to it; and perhaps Mr. Christie may contend that it was an error of the press, and therefore, for 'lawn,' we must read 'lane.' But where is the billiard-room? exclaimed the plaintiff, in an agony of disappointment. At last he was conducted to a room in the attic, the ceiling of which was so low that a man could not stand upright in it, and therefore must, per force, put himself into the posture of a billiard-player. Seeing this, Mr. Christie, by the magic of his eloquence, converted the place into a 'billiard room.' But the fine view of the Needles, gentlemen; where was it? No such thing was to be seen, and my poor client might as well have looked for a needle in a bottle of hay!" *

* Percy Anecdotes.

CHAPTER XI.

THE LIFE OF LORD ERSKINE CONTINUED.

ERSKINE identified himself too completely with the cause to sacrifice it, or even put it in jeopardy, for the sake of his jest, fool-born, indeed, when made by counsel at the client's cost. The dervise in the fairy tale, who possessed the faculty of passing his own soul into the body of any whom he might select, could scarcely surpass Erskine in the power of impersonating, for a time, the feelings, wishes, and thoughts of others. His entire devotion to the interests committed to him — the absorption of his whole faculties in the progress of the cause — his dogged determination to win, may in part account for the absence of humour generally attributed to his more important forensic efforts. It was only when certain of success that he allowed his humour full range, and gave sport a holyday. The jury had been already gained, the cause was secure, before his fancy flashed into merriment.

When taken *special* to Lancaster, to defend Mr. Walker on a charge of seditious conspiracy, the case for the prosecution had no sooner broken down, than he ventured to hold up its weakness to ridicule in the following playful fashion: —

"The arms having been locked up, as I told you, in the bed-chamber, I was shown last week, in this house of conspiracy, treason and death, and saw exposed to view, this mighty armoury, which was to level the beautiful fabric of our constitution, and to destroy the lives and properties of ten millions of people. It consisted, first, of six little swivels, purchased two years ago at the sale of Livesay, Hargrave, and Co. (of whom we have all heard so much), by Mr. Jackson, a gentleman of Manchester, who is also one of the defendants, and who gave them to Master Walker, a boy of about ten years of age. Swivels, you know, are guns, so called because they turn upon a pivot; but these were taken off their props, painted, and put upon blocks, resembling the carriages of

heavy cannon, and in that shape may fairly be called children's toys. You frequently see them in the neighbourhood of London, adjoining the houses of sober citizens, who, strangers to Mr. Browne and his improvements, and preferring grandeur to taste, place them upon their ramparts at Mile End or at Islington.

"Having, like Mr. Dunn (the witness for the prosecution) — I hope I resemble him in nothing else — having, like him, served his Majesty as a soldier (and I am ready to serve again if my country's safety should require it), I took a closer review of all I saw, and observing that the muzzle of one of them was broken off, I was anxious to know how far this famous conspiracy had proceeded, and whether they had come into action, when I found that the accident had happened on firing a *feu-de-joie* upon his Majesty's happy recovery, and that they had afterwards been fired upon the Prince of Wales's birthday. These are the only times that, in the hands of these conspirators, these cannon, big with destruction, had opened their little mouths; once to commemorate the indulgent and benign favour of Providence in the recovery of the sovereign, and once as a congratulation to the heir-apparent of his crown on the anniversary of his birth.

"I went next, under the master-general of his ordnance, Mr. Walker's chambermaid, to visit the rest of this formidable array of death, and found a little musketoon, about so high (describing it). I put my thumb upon it, when out started a little bayonet, like the jack in a box, which we buy for children at a fair. In short, not to weary you, gentlemen, there was just such a parcel of arms of different sorts and sizes, as a man collecting amongst his friends for his defence, against the sudden violence of a riotous multitude, might be expected to have collected. Here lay three or four guns of rusty dimensions, and here or there a bayonet or broadsword, covered over with dust and rust, so as to be almost undistinguishable."

For the result of Hardy's trial Erskine felt too solicitous to hazard more than a scornful jest; and it was only in a moment of exultation, towards the close of the proceedings against Horne Tooke, that a single ray of merriment lit up

his severe oratory. "It has not been attempted to prove," he exclaimed, "that our design was to arm: the abortive evidence of arms has been abandoned — even the solitary pike, that formerly glared rebellion from the corner of the Court, no longer makes its appearance, and the knives have retired to their ancient office of carving!"

When he could find an opportunity to relax from the graver business of banc, he would try hard by pun, and quip, and banter, to win a smile from Lord Kenyon, and, as a reward for the arduous task of unbending the rigid muscles of the Chief Justice, to gain some advantage for the client he was protecting.

A tinman at Plymouth had written with blunt dishonesty to the Chancellor of the Exchequer (Addington) in the following direct terms: —

"Sir,—This day a place in your gift became vacant by the death of A. H., landing surveyor at Plymouth. If you can procure the place for my own use and benefit, I will give you 2000*l.*, and will also give you my bond in any sum to keep the transaction a secret. Your answer will oblige your obedient humble servant,

"Th. Hamlin."

The silly knave had previously borne a good character. He was found guilty on a criminal information, and Erskine sought to obtain for him the contemptuous pity of the Court.

"This poor tinman," he said, "accustomed only to the noise of his own hammer, might think that every thing passed under the hammer, and that it was only necessary to give a person who had the disposal of an office his price for it. As a mark, my Lords, of the simplicity of this man, when the information was filed, and the writ came down to him with the red seal at the end of it, he vainly believed that the Chancellor of the Exchequer had sent him his appointment to the place."

The laughter of the Court probably saved him from a severer punishment than that, to which he was condemned. He was sentenced to pay a fine of 100*l.* and to be imprisoned three months.

In the routine task of Nisi Prius, Erskine would often

open a vein of pleasantry, such as common jurors could appreciate. The following instance was communicated by the late Mr. James Smith: —

An action was brought by a gentleman, who, whilst travelling in a stage-coach which started from the Swan with Two Necks, in Lad Lane, had been upset and had his arm broken. "Gentlemen of the jury," said Erskine, "the plaintiff in this case is Mr. Beverly, a respectable merchant of Liverpool, and the defendant is Mr. Wilson, proprietor of the Swan with Two Necks, in Lad Lane—a sign emblematic, I suppose, of the number of necks people ought to possess who ride in his vehicles."

Mr. Erskine was another day hard pressed in defending the proprietors of a stage coach, in an action on the case for negligence, for losing Mr. Polito's portmanteau. He sat in front of the coach, and his luggage on the top. "Why did he not," said the witty counsel, "take a lesson from his own sagacious elephant, and travel with his trunk before him!"

Pleading for a poverty-stricken defendant in a case of breach of promise of marriage, where the lady-complainant was on the shady side of forty, the cunning counsel drolly submitted to the jury, that it would have ruined his client to bring home an old-fashioned piece of furniture, where he had not even a place to hang it up in.

When defending a tallow-chandler, under a similar visitation, nothing could exceed the tone of pathos with which Erskine read the love-letters of the simple swain, in which he had written metaphorically of his love burning clear, of his heart being consumed like the wick of a candle — of the union of wax and spermaceti; — or of the mock solemnity with which he dwelt on the notable conclusion of a valentine: — "N. B. I have bad news for your brother; tallow is as high as ever!" The laughter in the jury-box augured ill for the fair plaintiff, whose damages were reduced to a fraction.

There were several among his rivals in the front seats at Nisi Prius, who could fence at the carte and tierce of raillery with wit as keen, and repartee as clever as his own. Some

of these passages deserve to survive the chance hour of pleasantry that gave them birth.

On a trial relating to the patent for a knee-buckle, Erskine held it up and exclaimed, "How would my ancestors have admired this specimen of dexterity!" The one-armed Mingay concluded his speech in reply with — "Gentlemen, you have heard a good deal to-day of my learned friend's ancestors, and of their probable astonishment at his knee-buckles. But, gentlemen, I can assure you, their astonishment would have been quite as great at his breeches."

In an action against a stable-keeper for not taking a proper care of a horse —"The horse," said Mingay, who led for the plaintiff, "was turned into a stable with nothing to eat but musty hay in the rack. To such feeding the horse demurred." — "He should have gone to the country," retorted Erskine. The jest can only be enjoyed thoroughly by professional readers, being founded on the terms of special pleading; but unprofessional readers may rest assured, that it is good as well as technical.

Another of his daily antagonists was Bearcroft, who, for his vein of grave sarcasm, had been chosen recorder of the Beef-steak Club.

A young gentleman of good family had married a woman of the town. His relatives and acquaintance deserted him. She plunged her husband into debt, and almost ruined him by her extravagance. He mustered courage to defend an action for goods furnished to her at enormous prices. Erskine was counsel for the defendant; and, aware of the wife's previous character, was obliged to make it a ground of appeal to the jury. He praised the amiable feelings of the husband, who had sought to restore his wife to the path of virtue, and inveighed against her base ingratitude, to which the plaintiff had lent himself. "For her he gave up his family, and sacrificed all his connexions." When Bearcroft came to reply, he treated Erskine's eulogium of his client's virtue, and the demerits of his wife, as mere burlesque. "My friend reproaches his client's wife with forgetfulness of the debt of gratitude which she owes him, that for her he had given up

all his connexions; but the balance of obligation will be found on her side — for, for him, she gave up all mankind."

There was another common-jury cause, an action brought by a gentleman against a lady, for ten guineas, money borrowed, which, in respect to its emphatic brevity, could not have been decided better before a tribunal at Lacedæmon. Erskine said he should prove the existence of the demand by the defendant's own hand-writing. "Since her love was extinguished, she had adopted the laconic, perhaps the best, style of epistolary writing. He should read her letter: —

'Sir, when convenient, you shall have your ten guineas. I despise you. 'CATHERINE KEELING.'

"That is my evidence," said Erskine, carelessly; "I shall prove the handwriting." — "Is that all?" said Bearcroft. "Yes," said Erskine. "Then I despise *you*," retorted Bearcroft; and Mr. Justice Buller exclaimed, "Call the plaintiff."

Another day, Bearcroft having trespassed too far on the feelings of his sensitive opponent, and bantered him upon a painful passage in his private history, incurred a grave and gentlemanly rebuke. In early life Erskine had fought a bloodless duel with Mr. Dennis O'Brian, in consequence of an altercation in the ball-room at Lewes. He was urging the impropriety of the practice when praying the sentence of the Court upon a defendant, for an assault on Dr. Remmett. Bearcroft could not refrain from irony when speaking in mitigation of punishment: —

"I feel myself compelled to express a wish that we may all profit by the grave sermon of my learned friend, inculcating the doctrine that no man should take revenge into his own hands, but should apply to the laws of his country. I hope we shall all benefit by this preachment, inasmuch as, we know, he has always practised this doctrine himself."

Erskine winced at the sarcasm, and replied with more than wonted gravity: —

"The defendant has given his counsel instructions to make observations rather more personal, I think, though perfectly good-humoured, than is necessary in a case of this sort. Irony

is extremely well in private company, but there are too many people around now to hear these sort of allusions. If in any part of my life I have trespassed and offended against the law, to be sure if I had been brought before this Court, I should have been punished for it. I am sincere when I say, that I think the practice of duelling is a base practice, and I wish it was abolished; but unfortunately men have not sufficient fortitude to refuse a challenge, for bravery does not consist in fighting a duel, but in refusing to fight one."

On some occasion, when Erskine had been expatiating to the jury on his own love of horticulture, and on the exquisite pleasure a botanist derived from examining different plants, he observed the Attorney-General taking notes, and hinted that his friend was probably as great an amateur in botany as himself. "Yes," said Law, "in pot herbs!"

That Erskine's rapid success, which rivalled in celerity, if it did not exceed, that of his most fortunate predecessors, Yorke and Murray, should excite some murmurs of disappointment, and give rise to a few sallies of spleen, was but natural. It is highly to the honour of an ambitious and sensitive profession, that the exhibition of such feelings should have been so rare, and that, when elicited, they should have been at once rebuked into silence. Among the solitary exceptions to the general good humour that pervaded the bar, were Baldwin and Lee. Each of these disappointed rivals tilted with the new champion in no chivalrous spirit, and, to the delight of all who witnessed the encounter, had to retire from the field discomfited and disarmed, "*parmâ non bene relictâ.*"

Honest Jack Lee, as he was popularly termed, could not conceal his annoyance, when he saw the full stream of business on which he had floated, turned at once into the channels of the new favourite. Lee was in great professional practice when Erskine came to the bar. They were counsel in opposite sides before a committee of the House of Commons on a contested election. Erskine, having occasion to observe on a part of the speech before delivered by Lee, humorously affected to adopt his singular style and action in speaking. Erskine crossed his arms on his breast, and hit off, with some

degree of humour, Lee's tone of voice, and manner of concluding his sentences. It was done in the most perfect good humour, but was not so received by Lee. "This gentleman, they tell me, has been a sailor; they say too, that he has been a soldier; and he will probably finish his career as a mountebank at Bartholomew fair." Lee gained his laugh at the time, for Erskine had no opportunity of reply; but with the trials of next term came heavy retribution.

"Erskine usually brought his authorities," says Mr. Espinasse, "written at length in a little marble-covered book, from which, even after long experience in his profession, he read and cited his cases. Baldwin, a barrister of considerable standing, distinguished for avarice, and jealousy of every rising junior, affected to ridicule Erskine's mode of preparing his arguments, saying on one occasion, with a sneer, that he wished Erskine would lend him his book. "It would do you no harm, Mr. Baldwin," said Lord Mansfield gravely, "to take a leaf out of that book, as you seem to want it."

At the expense of this low practitioner Erskine indulged in one of those *jeux-de-mots*, to which he delighted in turning legal phraseology. Baldwin lived in the house, which is now Surgeons' Hall, in Lincoln's Inn Fields. Being told that he had sold his house to the corporation of surgeons—"I suppose," said he, "it was recommended to them from Baldwin being so well acquainted with the practice of bringing in the body." Baldwin's business was almost wholly composed of motions of course, this of bringing in the body forming the chief."

In this forbidden ground, the region of puns, wit's lowest story, Erskine would disport himself with more than boyish glee. He fired off a double barrel when encountering his friend Mr. Maylem at Ramsgate. The latter observed that his physician had ordered him not to bathe, "Oh then," said Erskine, "you are '*Malum prohibitum.*'" "My wife, however," resumed the other, "does bathe." "Oh then," said Erskine, perfectly delighted, "she is '*Malum in se.*'"

When a military fever overspread the land, he was summoned with one voice to the command of the Law Association, composed of the Lincoln's Inn and Temple corps, and called,

familiarly, the Devil's Invincibles. They had greatly miscalculated his fitness for the situation. He could not, we are assured, manœuvre the corps through the most simple movements; and in exercising the battalion, which consisted of six companies, he gave his orders from a card prepared for him by his major, Major Reid. If Erskine ever possessed any military ardour, it was at that time nearly extinguished; he did not enter heartily into the duties of his command, and the parade had no longer any charms for him. A friend wishing to banter the colonel on the subject, told him he had just come from the parade of the Excise corps, then the worst in London, and that they appeared to him to be superior to his. "So they ought," said Erskine—"why they are all Cæsars (seizers)." In the same facetious spirit he suggested for the motto of his corps, "*Currat lex;*" and, complaining to Bell of his penmanship, declared that his pothooks were nearly as irregular, as the Lincoln's Inn volunteers coming to the "present."*

An acquaintance having mentioned a relative's illness, Erskine asked the nature of the complaint. Being told water on the chest, he answered briskly, for the pun interested him more than the invalid, "Then she's not to be pitied; it is lucky in these times to have any thing in one's chest."

But we must beware of pursuing his quiddities further than any but the most inveterate punsters would wish to follow. The worse they were, the more heartily did they seem to be enjoyed by himself, and the more loud and furious grew the laughter of his hearers, few of whom could be sedate enough to resist the infectious witchery of his mirth. For a large portion of the good spirit displayed in his favour by the bar, Erskine was doubtless indebted to his joyous and happy temper, to his hilarity of address and courteous bearing. If any acerbity be detected in the sallies we have imperfectly reported, for writing can only give the wax-work figure, the dead image of pleasantry †, that bitterness belongs to his con-

* With equal point the learned commander of a volunteer corps reviewed in the Phœnix park apologised for its serpentine character to the Lord Lieutenant by exclaiming, "Your excellency, we are lawyers, as this indenture witnesseth."

† Croly's George the Fourth.

temporaries, and not to himself: he appears always acting on the defensive. Twice only during the incessant practice of twenty-seven years, in the midst of that wear and tear of business, which exhausts the temper, as much as it fatigues the frame, is he proved to have provoked by his petulance any personal altercation; and the circumstances on both occasions display his character in an amiable light.

It was his misfortune, when young in the profession, to have a sharp dispute in court with a poor old barrister in a stuff gown, nicknamed "Frog Morgan!" from his unluckily citing "Croke Jack" (Croke, a reporter in the reign of James I. and Charles) over and over again in his argument, and from a fancied resemblance in tone and visage to a frog. Erskine felt, upon reflection, that he had gone too far. On the same evening, he called at Morgan's chambers, and apologised for the offence, and on the following day, in full court, he rose and expressed himself to the following effect:—"Mr. Morgan, I have already apologised to you in private for what I yesterday intemperately uttered, but, as the offence was public, I think the reparation should be so too. I therefore now beg to repeat my apology."

In the meridian of his fame, when flushed with the excitement of defending Hardy for high treason, he had a sharp altercation with Sir John Mitford, then Solicitor-General; the manner of his falling into which, and the consequent explanations, are highly characteristic.

A question as to the prisoner's declarations being objected to, Erskine proceeded to cite various cases from the State Trials, in which similar questions had been put. The Solicitor-General in reply stated that he thought it would be found that the questions had really been put upon the cross-examination of the witness, and not upon any original examination, and was courteously set right by Erskine: "I hope you will not be offended at me for this interruption, which may amend your last observation. They are all of them taken from the State Trials, and they are all upon original examinations." Sir John Mitford soon after reverted to his first impression: —

"Would it be permitted, upon a trial for murder, for in-

stance, to give in evidence, that the prisoner said he would not commit a murder? and yet, as far as I have any conception of this, as stated by my learned friend, it was simply that evidence; and, therefore, I think it must have been upon a cross-examination.

"Mr. Erskine: 'I tell you it was not.'

"Mr. Solicitor-General: 'Then I do not understand it.'

"Erskine: 'I see you do not.'

"Mr. Solicitor-General: 'The manner, Sir, in which you have thought proper to conduct yourself towards me, in the course of this trial, has been such as reflects upon my character. I will not submit to any man for knowledge of law; I am not used to talk of myself, but I will not be taught by you or any other person propriety of conduct, either in a civil or criminal case: I believe I know my duty in both as well as you do, and I trust that I shall discharge it.'" *

To prevent further heat, Chief-Justice Eyre, with his wonted urbanity, interfered — permitting the question to be put, admitting the general rule to be, as laid down by the counsel for the crown, but giving his opinion that the political speculative notions, which the prisoner entertained touching a reform of parliament, might very well be learned from the conversations which he had held, at any time or in any place. Erskine, though victor in the argument, asserted his right of explanation: —

"I agree with Mr. Solicitor-General, that very frequently an improper odium falls upon counsel; no man can cast his eye upon the State Trials, without seeing that an improper odium has fallen upon counsel conducting causes for the crown, in consequence of that humanity which has ever been the characteristic of the English nation. Thinking so, I did that which, perhaps, would have been better hereafter: I went out of my way, and, notwithstanding my weak state of health, spoke at some length, and with some anxiety, lest any man should suppose for a moment that I meant to make any such insinuation against any of the gentlemen at the bar: what return I have met with, I leave to others, who have heard it, to judge, without making any observation upon it, because it

* State Trials, vol. xxiv.

is not for your Lordship to redress it. With regard to Mr. Solicitor-General, thus much I have a right to say, and I am bound for myself to say it, I think that any man who improperly gives offence to another, very much forgets the character that ought to belong to him, and, if I had given any just offence to Mr. Solicitor-General, I should have been the first man, without any complaint from him, to have given him satisfaction for it; but, on the contrary, I have a right to complain of him, for when he had asserted (I took it for granted from not having heard what I said), that all the cases I cited were upon cross-examination, I thought it would be unmanly in me, afterwards, to take advantage of that remark in my reply; therefore, to enable the gentleman to make such observation upon the cases I cited, as would belong to them, when he stated that they were upon cross-examinations, out of a proper courtesy, and from that which belonged to the dignity of the bar, I told him that they were on original examinations, and I should have thought that would have satisfied Mr. Solicitor-General, that they were so, for I stated in the course of what I said, that I had personally collected them, and that they were on original examinations. After that, Mr. Solicitor-General goes on, and with great emphasis says, 'I shall still think they were on cross-examinations. I wrote it down, and every gentleman in court heard it, upon which I said, I aver again that they were on original examinations. 'Then,' he said, 'I do not understand them;' to which I said, 'I see you do not.' Why, I would say that to any man that ever existed, here or any where. If a man tells me that what I aver is not so, I would say to that man what I will not say here. So much for that."

In closing his argument, Erskine again made a graceful allusion to his late angry dispute with the counsel for the crown, striving to dispel, as far as in him lay, any lurking uneasiness that might remain: —

"It shows us how little dependence is to be had upon words, and how little it is evidence in high treason, what men who are warm will say, because we, who were thus warm, and who might be imagined to be really disaffected to one another, are persons who live in social life together, on terms of affection and regard; and therefore I am glad this

happens, because persons may see, how little we ought to depend upon what may be said by any man, when found heated at a tavern."

Whatever may be thought of the petulance which provoked the controversy, all must admire the gentlemanly feeling and thorough courtesy of his full and frank explanation. The *ci-devant* officer's wit and repartee were in general (to apply Sheridan's illustration) as keen, and at the same time as polished, as his sword.

Who would not have predicated that such a cunning master of fence, so quick and ready a disputant in the court, must succeed as completely in the political as in the legal arena? His friends foretold an ascendency there, not less rapid than at the bar, that his eloquence and promptitude would fortify or shake the Treasury Bench. Never were expectations more highly wrought, or doomed to receive a more cruel disappointment. "The House of Commons," says Adair, "is a sea strewed with the mightiest wrecks. It is a course in which the proudest strength has faltered, and the firmest confidence grown pale." Erskine's argosy, to pursue the metaphor, though it sunk not there, like so many legal freights, lay water-logged.

The narrative of his entrance and failure is shortly told. He had adopted with his wonted enthusiasm the liberal politics of his family, and, whilst the elder brother, the Earl of Buchan, sought to make converts to radical doctrines, he contented himself with speaking and acting as a zealous Whig. When the coalition ministry perilled the fate of their government on the East India Bill, it was determined to procure *coute qui coute* the powerful support of the popular leader of the bar. A convenient member was easily prevailed upon to accept the stewardship of the Chiltern Hundreds by one of those good old arguments, which would not have disgraced the days of Walpole. The bargain is described by Wraxall as a mere matter of course. The Duke of Richmond arranged the grant of a pension of 1000*l.* a year to Sir William Gordon, in order that, by vacating his seat for Portsmouth, he might enable government to introduce Erskine.

The price paid for his entrance shows the extent of public

and ministerial expectation. Nobly born, a thorough gentleman, in the receipt of a large professional income — of commanding presence — heralded by the voice of fame — accustomed to address public assemblies — daily flushed with forensic triumphs — in the prime of manhood — what might he not accomplish, endued with all those natural and acquired advantages, which tell with such effect in the House of Commons? But he felt their weight as oppressive, shrunk from their clamorous welcome as if "scared at the sound himself had made," and became the victim of his over-sensitiveness to applause.

His failure, notwithstanding the splendid augury of rapid professional success, had been foretold by his brother barrister, in the following interesting letter: —

"November 3. 1783.

"Wallace is gone down to Teignmouth, the place where Dunning died, in all probability on the same errand. Every body says that Erskine will be Solicitor-General; and if he is, and indeed whether he is or not, he will have had the most rapid rise that has been known at the bar. It is four years and a half since he was called, and in that time he has cleared 8000*l.* or 9000*l.*, besides paying his debts; got a silk gown, and business of at least 3000*l.* a year; a seat in parliament, and over and above has made his brother Lord Advocate. For my part I have great doubts whether his coming into Parliament was a wise thing: he sacrificed his House of Commons business, which was very profitable; and, besides, his success seems to me very doubtful. He has several of Burke's defects, and is not unlikely to have his fate, and the expectation from him will be too great to be satisfied. We expect a match between him and Pitt, and another between Fox and Flood."

Taking his seat on the same night as Mr. Scott, and rising to speak shortly afterwards, the young member was disconcerted in his maiden speech by the following dramatic incident: —

"Pitt, evidently intending to reply, sat with pen and paper in his hand, prepared to catch the arguments of this formidable adversary. He wrote a word or two. Erskine proceeded; but with every additional sentence Pitt's attention to the paper relaxed, his look became more careless, and he obviously began to think the orator less and less worthy of his

attention. At length, while every eye in the House was fixed upon him, with a contemptuous smile, he dashed the pen through the paper and flung them on the floor. Erskine never recovered from this expression of disdain; his voice faltered, he struggled through the remainder of his speech, and sank into his seat dispirited, and shorn of his fame." *

Pitt's pantomimic display of contempt has been deemed by some a clever *ruse de guerre*, a slight-of-hand trick, done designedly to lower the estimation of a formidable antagonist; but we think it more in unison with the supercilious spirit of the man to suppose, that the exhibition was unprepared. He had expected a champion worthy to meet him in single combat, was more displeased than gratified at the tyro's political feebleness, and took the readiest way of marking his disappointment. It had certainly the effect of silencing the new member, who quailed, during the short remainder of the session, before a spirit more powerful than his own.

"Pitt had been once," says Espinasse, "in a cause with him at Westminster, and attended a consultation. Erskine was the kindest of leaders, and the most gentle and encouraging to his juniors; but possibly some of his vagaries had offended the precise and serious young gentleman, who perhaps felt somewhat of the alarm that I have known the clients of the great advocate feel, on attending a consultation upon their case. Certain it is that Pitt never justly appreciated that illustrious man, and always took a pleasure in mortifying him in the House."

A mind of his elasticity and variety, however, must have occasionally distinguished itself, but he obviously felt that his place was not in the legislature, and that no man can wisely hope for more than one kind of eminence. Except on some party emergency, he seldom spoke, and never with much expectation of public effect.

Fortunately for him the parliament was abruptly dissolved; and perhaps among the crowd of Fox's martyrs, whom the dissolution dispersed without a chance of immediate re-elec-

* Croly's Life of George IV.

tion, there was not one on whom the blow fell more lightly. He resumed his practice at the bar of the House, where he had won his early laurels, with alacrity; for he there felt secure from interruption, and confident of victory.

Deprived of a seat, but not shorn of his forensic fame, he was selected to oppose two important questions before committees of the whole House: the Westminster scrutiny, and Mr. Pitt's bill for regulating the affairs of the East India Company. In cross-examining a witness who had attributed misconduct to Fox's agents, Erskine inquired — "Why do you infer they were agents?" The witness replied, that he inferred it, because they appeared as his friends; upon which the counsel exclaimed that, if all Fox's friends were to be considered his agents, every honest man might be so esteemed, who was not a member of that House! Erskine was ordered to withdraw; and great blame was attributed to the Speaker, who, instead of repressing such disorderly language, allowed it to pass unnoticed. Cornwall admitted that Erskine's conduct was improper, and a resolution of censure was proposed, but Pitt objected to any further notice, saying, with a supercilious sneer, that the learned gentleman's conduct might probably form part of his instructions.

His demeanour, when counsel for the East India Company, appears to have been characterised by equal boldness — the term *audacity* would be scarcely misapplied. He eulogised in the warmest terms the rejected measure of his friend, and treated the bill of 1784 as a vile imposture practised on a credulous nation. Indignant murmurs at length compelled the Speaker to interpose his authority —

"If, Mr. Speaker," he continued, "I have been guilty of any irregularity, it arises solely from a diminution of that respect, which I was accustomed to feel for this assembly, before it was shorn of its dignity, but which no longer animates me, since the assumption of the extraordinary powers, arrogated and exercised by the present Board of Control."

He then expatiated on the humility of his present situation, standing as a counsel at the bar of that House of which he had formerly the honour to be a member; and enlarged on the respect that was still due from a man of his profession addressing an assembly of that elevated and important nature.

He said "he was well aware that harangues from counsel at their bar were not the species of oratory, in which that House took the greatest pleasure, but that it rather submitted to them, from the consideration that it was its indispensable duty to receive them by way of physic, as it were, for the benefit of the constitution. He promised to make his dose as palatable as the nature of the patient's case would admit." Occasionally the House expressed their disapprobation of his sarcasms, and the Speaker again interrupted him, when he said the House ought not, at that late hour, to enter upon the discussion of so important a subject. The Speaker told him it did not become a counsel at their bar to hint when they ought to adjourn, and that the House would govern its own proceedings as it thought proper.

A vacancy in the representation of Portsmouth, in the following year, reinstated Erskine in the House, but he lost his boldness upon being restored to his place. The friend and second of Fox could not expect forbearance at the hands of his rival, who insulted a foe afraid to meet him in single combat, like some warrior in the Iliad, conscious of superior strength. According to the precedent of that well-fought field, Erskine preferred going out at an earlier period of the evening, and encountering a champion of less prowess. Such was the lasting impression that terrible debater, Pitt, made upon him, that, long after his death, he spoke of his eloquence 'as far exceeding any thing that had ever been exhibited before, in any assembly of a civilised country.'

By a singular fatality Erskine was doomed to meet with as hard measure from Burke, a comrade in the camp, as from his grand political enemy — the more mortifying to one, whose veneration for that greatest of modern statesmen scarcely fell short of idolatry. Next to the Bible, the tasteful advocate had invariably recourse to his writings, as the well-spring of eloquence and wisdom, whether he sought to inform, persuade, or subdue his audience; and he never made a speech of moment, without introducing some beautiful text or motto, from those almost inspired pages. No disciple sitting at the feet of Gamaliel, no pupil of the Porch, could look up with more entire submission to his master, even when there escaped from his lips the accents of contumely and scorn.

To a lurking jealousy of the wealth and distinction which Erskine had acquired at the bar, even though Burke might be himself unconscious of the cause, may perhaps be attributed the dislike, which he always exhibited towards the popular lawyer. The prejudice formed part indeed of his general antipathy to a profession in which his lot had not been cast, whose unbending, technical, rules often interfered with his own comprehensive conceptions, whose professors were generally opposed to the principles of the old Whigs, which he most affected, and who thwarted the darling wish of his heart in the impeachment of Warren Hastings.

When Erskine headed the band of lawyers who argued that the impeachment had abated by the dissolution of Parliament — a doctrine certainly more in accordance with technical reasoning than with the principles of justice or common sense — the manager of the Commons steeped his words in venom, and searched in his ample armoury for missiles, poisoned at the point with obloquy and contempt.

Having cited precedents from a little book, according to his wont, Erskine was sneered at for taking the field, like David against Goliath, armed with a stone and a sling, but with the difference in his case, that they could do no execution. In answer to his complaint of the length of the trial, Burke borrowed his imagery from that large Oriental storehouse in which he had been long expatiating, and asked whether the learned gentleman remembered that, if the trial had continued three years, the oppressions had continued twenty, whether, after all, there were hour-glasses for measuring the grievances of mankind, or whether they, whose ideas never travelled beyond a Nisi Prius cause, were better calculated to ascertain what ought to be the length of an impeachment, than a rabbit, who breeds six times in a year, was able to judge of the time proper for the gestation of an elephant? *

"The learned gentleman," said Burke, "had a great deal of law, though the French had none, a great deal of government of himself, and an excellent constitution." At another time Burke ridiculed Fox's lamentations for the absence of Erskine. Though Atlas was gone, Hercules remained to lend his shoulders to the falling globe of the constitution.

* Prior's Life of Burke.

When Erskine had remarked in a deprecating tone, upon another occasion, that lawyers were not at home in that House, Burke retorted in a tone of rude triumph, that they only exercised themselves there in skirmishing with the rights of the Commons, with which in the other House they meant to carry on a war; all they could afford to give members there was a sort of quarter-sessions law, a law *minorum gentium*. "He believed they were not at home there, they were birds of a different feather, and only perched in that House on their flight to another; only resting their tender pinions there for awhile, yet ever fluttering to be gone to the region of coronets; like the Hibernian in the ship, they cared not how soon she foundered, because they were only passengers; their best bower anchor was always cast in the House of Lords."

Erskine replied with mingled truth and grace, that, "if he had meant only to rest in that place in the course of such a pursuit, he should hardly have lighted on that naked bough which supported him, but have sought the luxuriant and inviting foliage, which overspread the opposite side of the House, which would have afforded him kind shelter, and have accelerated his flight."

The breach was subsequently widened, when the passionate statesman repudiated the term of friend, with which Erskine courteously named him, and asked contemptuously if the learned gentleman knew the meaning of a term he used so glibly; yet such was Erskine's kindly spirit, that these sarcastic insults, the most acute a gentleman of spirit and feeling could receive, left in his heart no rankling resentment. He still spoke of Burke's writings with enthusiasm:—

"I shall take care to put Burke's work on the French Revolution into the hands of those, whose principles are left to my formation; I shall take care that they have the advantage of doing, in the regular progression of youthful studies, what I have done, even in the short intervals of laborious life; that they shall transcribe, with their own hands, from all the works of this most extraordinary person, and from the last among the rest, the soundest truths of religion, the justest principles of morals, inculcated and rendered delightful by the most sublime eloquence, the highest reach of philosophy,

brought down to the level of common minds, by the most captivating taste, the most enlightened observations on history, and the most copious collection of useful maxims from the experience of common life, and separate for themselves the good from the bad."

Adverting to his authority on the State Trials, he said: —

"I should indeed be ashamed, particularly at this moment, to name him invidiously while he is bending beneath the pressure of a domestic misfortune, which no man out of his own family laments more than I do. [Burke had just lost his only son.] No difference of opinion can ever make me forget to acknowledge the sublimity of his genius, the vast reach of his understanding, and his universal acquaintance with the histories and constitution of nations."*

Erskine would fain on his death have moved the erection of a national monument in his place in Parliament, but ascertained that the motion was sure to be coldly received, and might even, to the disgrace of England's senators, be rejected. He spoke with equal warmth in old age as in youth of that consummate orator; but, in a conversation with Dr. Clarke, at Cambridge, qualified his enthusiasm by a very graphic account of Burke's unfortunate manner in the House. The following is the note taken of it by the learned doctor: —

"While we were waiting at Trinity Lodge for the deputation from the senate to conduct the Chancellor, I had a conversation with Lord Erskine upon the qualifications of Burke as an orator; Lord Erskine said that his defect was episode —a public speech, he said, should never be episodical. It is a very great mistake; I hold it to be a rule respecting public speaking, which ought never to be violated, that the speaker should not introduce into his oratory insular brilliant passages—they always tend to call off the minds of his hearers, and to make them wander from what ought to be the main business of his speech. If he wish to introduce brilliant passages, they should run along the line of his subject-matter, and never quit it. Burke's episodes were highly beautiful; I know nothing more beautiful, but they were his defects in

* State Trials, vol. xxv.

speaking. (He repeated several specimens from his speeches on the American war.) Lord Erskine also told me that Burke's manner was sometimes bad; it was like that of an Irish chairman. Once, he said, I was so tired of hearing him in a debate upon the India Bill, that, not liking he should see me leave the House while he was speaking, I crept along under the benches and got out, and went to the Isle of Wight. Afterwards that very speech of his was published, and I found it to be so extremely beautiful, that I actually wore it into pieces by reading it." *

Mr. Prior, Burke's biographer, comments in a tone of querulous remark on this conversational criticism, stating that the tone of it belongs to that vague and careless common-place rattle, in which Erskine frequently indulged. "His observation about the Irish chairman is an extravagant exaggeration; and the story of creeping along under the benches (if taken literally), must be a positive untruth, for such a thing was not practicable. The whole conversation bears traces of that loose juvenility of manner to which he was prone."

To the truth of the sketch, however, testimony is borne by contemporary biographers, who prove that the features of this portrait are only slightly exaggerated, and certainly not caricatured. It would be idle to suppose that the narrator meant more by creeping under the benches, than to describe vividly the stealthy manner of his escape.

Of Erskine's own manner in the House Lord Byron said sarcastically, that, when he heard him there, he wished him at the bar once more. The impression produced by his parliamentary efforts appears to have been favourable on hearers of more good nature, who had no opportunity of contrasting the lawyer with the politician — of making himself his parallel. "Erskine's enemies," says Wraxall, "pronounced his performances tame, and destitute of the animation which characterised his speeches in Westminster Hall. To me, who, having never witnessed his jurisprudential talents, could not make any such comparison, he appeared to exhibit shining powers of declamation."

* Otter's Life of Dr. Clarke.

How completely they failed to captivate those judges of eloquence who had heard him elsewhere is shown in the diary of Mr. Green, the elegant author of the Diary of a Lover of Literature.

"Left the House at eight, when Erskine was speaking for the bill for restricting Monastic Institutions in this country. The principal speakers—Wyndham, colloquial and ingenious, but desultory and ineffective; Sir William Scott, solemn, neat, and elegant. After having listened term after term with delight and exultation to this pride of the English bar in his place, I confess I never hear him above stairs but with some emotions of shame for my profession. The constant habit of advocating private suits before a superior tribunal, generates a species of eloquence which, however excellent in itself, appears to cruel disadvantage in a deliberative assembly of statesmen and legislators, debating as equals, seriously and in earnest, the most important interests of the empire. Bearcroft, indeed, whom I once heard on Erskine's libel bill, appeared to suffer little by the change of station: but then, with a vein of the driest and happiest humour I ever met with, there was a solemn gravity in his deportment, and a didactic energy in his manner, which, even at the bar, removed the advocate from sight, and frequently rendered the argument of the counsel more dignified and impressive than the judgment from the bench."

The fact that a man of taste and an admirer should leave the House when Erskine was speaking, proves to demonstration the difference that existed between his fervid eloquence at the bar, and his cold declamation among the assembled Commons. The difference between Philip sober and Philip in his cups was not more striking, and it has been thus accounted for by the highest living authority on matters of rhetoric, Lord Brougham. Admitting the failure in his laudatory notice of Erskine, he explains it in the following manner:

"The ministry of Mr. Pitt did not derive more solid service from the bar in the person of Mr. Dundas, than the opposition party did ornament and popularity in that of Erskine. His parliamentary talents, although they certainly

have been underrated, were as clearly not the prominent portion of his character. Nevertheless it must be admitted that, had he appeared in any other period than the age of the Foxes, the Pitts, and the Burkes, there is little chance that he would have been eclipsed even as a debater; and the singular eloquence and powerful effect of his famous speech against the Jesuits Bark Bill, in the House of Lords, abundantly proves this position. He never appears to have given his whole mind to the practice of debating; he had a very scanty provision of political information; his time was always occupied with the laborious pursuits of his profession; he came into the House of Commons, where he stood among several equals, and behind some superiors, from a stage where he shone alone, and without a rival; above all, he was accustomed to address a select and friendly audience, bound to lend him their patient attention, and to address them by the compulsion of his retainer, not as a volunteer coming forward in his own person—a position from which the transition is violent and extreme, to that of having to gain and to keep a promiscuous, and in great part hostile, audience, not under any obligation to listen one instant beyond the time during which the speaker can interest, or flatter, or amuse them. Earlier practice, and more devotion to the pursuit, would, doubtless, have vanquished all these disadvantages, but they sufficed to keep Erskine always in a station far beneath his talent, as long as he remained in the House of Commons."

The causes thus clearly given may partly account for Erskine's comparative failure in parliament, but perhaps sufficient stress is not laid upon the main reason, the leading weakness of his mind and temperament, a too keen sensibility to the expressions of adverse feeling, an over-weening vanity and self-appreciation. It was necessary that he should be the leading figure, the admired of all beholders, the prominent figure on the platform. Even then he could not brook the slightest appearance of dislike, indifference, or neglect.

He had, says Dr. Croly, a morbid sensibility to circumstances of the moment, which sometimes strangely enfeebled his presence of mind; any appearance of slight in his audience, a cough, a rude laugh, or a whisper, has been known to dis-

hearten him visibly. Aware of this infirmity, an attorney wise in his generation has been known to plant a man of drowsy appearance and habits beneath the Judge, directly opposite the place where Erskine was accustomed to address the jury. Agreeably to his instructions, and nothing loth, the sleepy hind would make a hideous grimace, and give way to the utmost expression of weariness in the midst of the most impassioned sentences. A pause of effect would be broken in upon by a dreadful yawn, and a splendid peroration be interrupted by a titter in the second row, and the cry of silence from the ushers at the too plain indication of a snore. Erskine could not withstand the torture, but sat down abruptly.

Garrow, lost in thought, having once fixed his eyes upon him, he stooped down to whisper a remonstrance—"Who do you think can get on, with that wet blanket of a face of yours before him?"

Interruption from the jury he could indeed resist, for to them he spoke as a superior, and demanded a patient hearing. "I shall name you, Sir, presently," was his instant rebuke to a juryman, who expressed too openly his dislike of the argument in a state prosecution.

Unjust imputations from the bench he could repel, for he felt that the independence of the bar was embodied in his person: "I shall not sit down; your Lordship will perform your duty, I shall perform mine," was his answer to an intemperate threat from the Judge.

Could he have summoned to his aid the same moral courage in St. Stephen's Chapel, he might have safely braved the premier and his body-guard. But fearless in his own forensic field, he had no reserve of political courage to resist Cæsar and his legions; no fund of political knowledge sufficient to contemn the withering sneer of Pitt, and the derisive shouts of his satellites; and from an excess of wounded self-love he determined to risk himself no more.

It would be unjust to his better nature not to record, that his egotism was wholly unmixed with any thing offensive to others, though it might excite a smile at his own expense. Far from seeking to raise himself by their depression, his

vanity was of the best natured, most social, and least selfish kind; nay, he always seemed to extol the deeds of others with yet more enthusiasm than he ever displayed in recounting his own. The favourite of fortune, the artificer of his own greatness, he might be pardoned by friendly critics for dilating on his own success, and might well be giddy at the prospect of his rapid elevation.

After a state of privation requiring the strictest economy, he was enabled to return his income to the Commissioners of the Income Tax at 5,500*l.* a year; he could inform Wilberforce in 1796 that he had received sixty-six special retainers of three hundred guineas each at least, and the number was increased to nearly one hundred before his elevation to the peerage. He was sought for with such avidity, and enjoyed the plenitude of his fame so fully, that he once told Sir Vicary Gibbs, pointing to a particular cause, "Now would I give one hundred guineas if I were in that, for then I should be in every cause in the paper."

With an appetency of applause equal to that of which the celebrated Garrick was accused, he saw the evidences of his triumph daily, and was intoxicated with the incense. The loud laughter, or tears, of the audience, the occasional faintings in the boxes, could not more delight the soul of the modern Roscius, open to all the titillations of vanity, than did the visible emotions of jurymen—their relaxed muscles at the jest—the dark look of indignation at the invective—the plaudits scarcely suppressed in deference to the Court—the favourable verdict—gladden the heart of the sensitive orator. Both were alike players, strutting their hour upon the stage, and would alike enact their parts over again, too frequently *encore* their best things at private rehearsals, making their homes a theatre, and their friends an audience.

To enhance the effect of his great performances, when brought down on special retainers, Erskine would sometimes condescend, we are told, to a little theatrical contrivance. He examined the court the night before the trial, in order to select the most advantageous place for addressing the jury. On the cause being called, a crowded audience were perhaps kept waiting a few minutes before the celebrated stranger

made his appearance, and when at length he gratified their impatient curiosity, a particularly nice wig, and a pair of new yellow gloves, distinguished and embellished his person, beyond the ordinary costume of the barristers of the circuit.

This weakness in so great a man (which he shared with Chatham and Mirabeau) was that species of moral blunder, which in modern ethics is deemed worse than a fault, as it gave frequent occasion of triumph to his enemies, and mortification to himself. The effects of his love of the first personal pronoun has been well described by one who must have had a fellow-feeling.

"His egotism was remarkable, but there was a *bonhommie* in it that showed he had a better opinion of mankind than they deserved; for it implied a belief that his listeners could be interested in what concerned him, whom they professed to like. He was deceived in this, as are all who have a favourable opinion of their fellow-men in society; all and each are occupied with self, and can rarely pardon any one, who presumes to draw their attention to other subjects for any length of time. Erskine had been a great man, and he knew it; and, in talking so continually of self, imagined that he was but the echo of fame. All his talents, wit, and brilliancy, were insufficient to excuse this weakness in the opinion of his friends: and I have seen bores, acknowledged bores, turn from this clever man with every symptom of ennui when he has been reciting an interesting anecdote, merely because he was the principal actor in it."*

One might be excused joining in the cynicism of the preceding observations, when he reads in Lord Byron's journal the following entry, made, it would appear, at the close of some fatiguing conversation with this dealer in the personal pronoun: —

"A goodly company of lords, ladies, and wits. There was Erskine, good, but intolerable, — he jested, he talked, he did every thing admirably, but then he would be applauded for the same thing twice over. He would read his own verses, his own paragraphs, and tell his own stories again and again,

* Moore's Life of Lord Byron.

and then the trial by jury!!! I almost wished it abolished, for I sat next him at dinner. As I had read his published speeches, there was no occasion to repeat them to me."

His style was thus parodied in the "Antijacobin," in a pretended report of a meeting of the friends of freedom: —

"He (Erskine) had not the advantage of being personally acquainted with any gentlemen of the directory;—he understood, however, that one of them (Mr. Merlin), previous to the last change, had stood in a situation similar to his own. He was, in fact, nothing less than a leading advocate and barrister, in the midst of a free, powerful, and enlightened people.

"The conduct of the directory, with regard to the exiled deputies, had been objected to by some persons, on the score of a pretended rigour. For his part, he should only say, that having been, as he had been, both a soldier and a sailor, if it had been his fortune to have stood in either of these two relations to the directory — as a man, and as a major-general, he should not have scrupled to direct his artillery against the national representation: — as a naval officer, he would undoubtedly have undertaken for the removal of the exiled deputies: admitting the exigency, under all its relations, as it appeared to him to exist, and the then circumstances of the times, with all their bearings and dependencies, branching out into an infinity of collateral considerations, and involving in each a variety of objects, political, physical, and moral; and these again under their distinct and separate heads, ramifying into endless subdivisions, which it was foreign to his purpose to consider.

"Mr. Erskine concluded by recapitulating, in a strain of agonising and impressive eloquence, the several more prominent heads of his speech: — He had been a soldier and a sailor, and had a son at Winchester school, — he had been called by special retainers during the summer into many different and distant parts of the country — travelling chiefly in post-chaises — he felt himself called upon to declare, that his poor faculties were at the service of his country — of the free and enlightened part of it at least, — he stood here as a man — he stood in the eye, indeed in the hand, of God — to whom

(in the presence of the company and waiters) he solemnly appealed — he was of noble, perhaps, royal blood — he had a house at Hampstead — was convinced of the necessity of a thorough and radical reform — his pamphlets had gone through thirty editions — skipping alternately the odd and even numbers — he loved the constitution, to which he would cling and grapple — and he was clothed with the infirmities of a man's nature — he would apply to the present French rulers (particularly Barras and Rewbell) the words of the poet: —

> 'Be to their faults a little blind;
> Be to their virtues very kind,
> Let all their ways be unconfin'd,
> And clap the padlock on their mind!'—

And for these reasons, thanking the gentlemen who had done him the honour to drink his health, he should propose — '*Merlin, the late Minister of Justice, and Trial by Jury.*'"

In the zenith of his fame there were written under his portrait in the print-shops, in large capitals, I—I—I, and then in pica mina, *me — me — me.* The editor of the "Morning Chronicle," in reporting one of his orations, left many words imperfect, and put in an apologetic note to the effect that the printers were out of little i's, and that all the great I's had been exhausted long ago.

Cobbett also fed fat his envy of the successful, but too self-complacent orator. "Mr. Erskine delivered a most animated speech in the House of Commons on the causes and consequences of the late war, which lasted thirteen hours, eighteen minutes, and a second, by Mr. John Nicholl's stop-watch. Mr. Erskine closed his speech with a dignified climax — 'I was born free, and, by G—d, I'll remain so.' A loud cry of 'hear, hear,' in the gallery, in which were citizens Tallien and Barrere. On Monday three weeks we shall have the extreme satisfaction of laying before the public a brief analysis of the above speech, our letter-founder having entered into an engagement to furnish a fresh fount of I's.*

How far Erskine's good-natured friends joined in these rough jests, and with what keen relish, may be discovered from the following scene in the Hampstead School for Scandal.

* This savage satirist would write of Lord Erskine by his second title as Baron *Clack*mannan.

Madame D'Arblay, in the memoirs of her father, Dr. Burney, gives a lively description of a party at Mrs. Crewe's, at the Hampstead villa:—

"Our evening finished more curiously than desirably, by a junction that robbed us of the conversation of Mr. Burke. This was the entrance of Lord Loughborough and of Mr. and Mrs. Erskine, who, having villas at Hampstead, and knowing nothing of Mrs. Crewe's party, called in accidentally from a walk. If not accidentally, Mr. Erskine at least would probably have denied himself a visit, that brought him into a coterie with Mr. Burke, who openly in the House of Commons, not long since, upon being called by Mr. Erskine his right honourable friend, sternly demanded of him whether he knew what friendship meant? From this time there was an evident disunion of cordiality in the party. My father, Mr. Elliot, Mr. Richard Burke, and young Burke, entered into some general discourse in a separate groupe. Lord Loughborough joined Mrs. Burke. The chair of Mrs. Erskine being next to mine, she immediately began talking to me as chattily and currently, as if we had known each other all our lives. Mr. Erskine confined his attention exclusively to Mrs. Crewe.

"Mr. Burke, meanwhile, with a concentrated but dignified air, walked away from them all, and threw himself on a settee in a distant part of the room. Here he picked up a book, which he opened by chance, and, to my great astonishment, began reading aloud! but not directing his face, voice, or attention to any of the company. On the contrary, he read with the careless freedom from effort or restraint that he might have done had he been alone; and merely aloud, because, the book being in verse, he was willing to add the pleasure of sound to its sense. But what to me made this seem highly comic, as well as intrepidly singular, was that the book was French, and he read it not only with the English accent, but exactly as if the two nations had one pronunciation in common of the alphabet.* It was a volume of Boileau,

* There must be some dash of fiction in this part of the narrative, as Burke had learnt the correct pronunciation on the continent, and was an excellent French scholar. He was at this very time in habits of daily conversation with

which he had opened at the famed and incomparable *Epitre à son Jardinier.* Yet, while the delivery was so amusing, the tone, the meaning, the force he gave to every word were so winning to my ears that I should have listened to nothing else, if I had not unavoidably been engrossed by Mrs. E., though from her too I was soon called off by a surprise and half-alarm from her celebrated husband.

"Mr. Erskine had been enumerating fastidiously to Mrs. Crewe, his avocations, their varieties, and their excess; till, at length, he mentioned, very calmly, having a case to plead soon against Mr. Crewe, upon a manor business in Cheshire. Mrs. Crewe hastily interrupted him, with an air of some disturbance, to inquire what he meant, and what might ensue to Mr. Crewe? 'Oh, nothing, but losing the lordship of that spot,' he coolly answered; 'though I don't know that it will be given against him; I only know for certain that I shall have 300*l.* (the lady should have written guineas) for it! Mrs. Crewe looked thoughtful, and Mr. Erskine then, finding he enjoyed not her whole attention, raised his voice, as well as his manner, and began to speak of the New Association for Reform, by the Friends of the People; descanting in powerful, though rather ambiguous, terms, upon the use they had thought fit in that association to make of his name; though he had never yet been to the society; and I began to understand that he meant to disavow it; but presently he added, 'I don't know. I am uncertain, whether *I* shall ever attend. I have so much to do — so little time — such interminable occupation! However, I don't yet know; I am not decided; for the people must be supported!' — 'Pray, will you tell me,' said Mrs. Crewe, coolly, 'what you mean by the people? for I never know.' Whether she asked this with real innocence, or affected ignorance, I cannot tell! but he was evidently surprised by the question, and evaded any answer. Probably he thought he might as well avoid discussing such a point before his friend Mr. Burke; who, he knew well, though lying perdu from delicacy to Mrs. Crewe, would resistlessly be ready, upon the smallest provocation, to

Abbés and other Emigrés, whom he maintained for months under his hospitable roof, and who knew not the English tongue.

pounce with a hawk's power and force upon his prey, in order to deliver a counter interpretation to whatever he, Erskine, might reply, of who and what were meant by the people. I conjecture this from the suddenness with which Mr. Erskine, after this interrogatory, almost abruptly made his bow.

"This renowned orator," continues the celebrated Novelist, "at a convivial meeting at his own house, fastened upon my father with all the volubility of his eloquence, and all the exuberance of his happy good humour, in singing his own exploits and praises, without insisting that his hearer should join in chorus; or rather, perhaps, without discovering from his own self-absorption, that that ceremony was omitted."

In this clever sarcastic sketch, Miss Burney unconsciously suffers the little secret to escape, that the egotistical lawyer was no great favourite with the authoress of Evelina. But we cannot wonder that literary ladies — the committee of the blue-stocking club — so acute in detecting foibles, and so particular in exacting attention, should visit this particular foible with marked displeasure, and that the self-worshipper should be unpopular in the boudoir. A sister-author accordingly puts on the black cap when passing judgment on his demerits, as a volatile but boisterous companion.

"Among the chief talkers at the Bishop of St. Asaph's," writes Hannah More, "was Mr. Erskine. To me he is rather brilliant than pleasant. His animation is vehemence; and he contrives to make the conversation fall too much on himself — a sure way not to be agreeable in mixed conversation. The bar seems to be a fitter theatre for his talents than the drawing-room, where good breeding is still more necessary than wit."

An exception occurs in the person of Miss Seward, with whom he had often exchanged the small coin of compliment: —

"The enchanting Mr. Erskine honoured me with frequent attentions in the ball-rooms at Buxton, and with frequent visits at my lodgings, where he often met Mr. Wilberforce. . . . Did Mr. Erskine tell you of our accidental rencontre on the Chatsworth road? I said to my mind, what an elegant

figure is that gentleman approaching us, who, loitering with a book, now reads and now holds the volume in a dropt hand to contemplate the fine views on his right! There seems mind in every gesture, every step, and how like Mr. Erskine! A few seconds converted resemblance into reality. After mutual exclamations, the graceful being stopt the chaise, opened the door, and putting one foot on the step, poured all his eloquence upon a retrospect of the hours we had passed together at Buxton; illuminating, as he flatteringly said, one of those seldom intervals of his busy life, in which his mind was left to enjoy, undisturbed, the luxury of intellectual intercourse." *

In a subsequent letter, the literary coquette writes:—"I have not read aloud less than fifty times this violent story, Spencer's Leonora.† Its reader's powers have been represented as Siddonian. Then one party after another petitioned to hear it, till there was scarce a morning in which a party of eight or ten did not flock to my apartments to be poetically frightened. Erskine, Wilberforce, every thing that was every thing, and every thing that was nothing, flocked to Leonora!"

Erskine was always an especial favourite with a character still more open and simple-minded in his vanity, the late Dr. Parr. Similarity of opinion in politics — an appetite equally ravenous of praise — an equal alacrity to pay as to receive flatteries, and occasional meetings in the same Whig coteries, soon ripened their intimacy into lasting friendship.

Delighted with his conversational talents, the Doctor exclaimed one day at table — as the highest recompense in his power to bestow — "When you die, I will write your epitaph!" Erskine repaid his compliment with interest, remarking, "It is almost a temptation, my dear doctor, to commit suicide."

A large portion of the correspondence between Parr and Erskine has been preserved ‡, from which a few specimens may be selected, for several of his letters to the worthy

* Seward's Letters.
† Bürger's Leonora, translated by the Honourable William Spencer.
‡ Works of Dr. Parr, by Johnstone.

pedagogue present the most lively sketches of character that could be taken, dashed off unwittingly by himself, during the most active part of a busy life, and mark his fervid whiggery in politics, his *bonhomie*, and festivity of temper.

"My dear Sir,

"I have a thousand thanks to send you for your kind and friendly letter. The approbation of such an excellent judge of every accomplishment is a great prize; and I hope to be a candidate for it to better effect in a few months, when Gurney publishes the proceedings, of which you have as yet but an imperfect sketch. Let me also thank Mrs. Parr for her partial judgment, and I hope that in a few months she will be a complete convert to reform of parliament. God knows the news of to-day might work a conversion of itself. All is lost in Flanders; and you may expect to hear in a few days complete and total rout and overthrow. I hope we shall meet soon in London. In the mean time, &c.

"T. ERSKINE.

"P. S. — Our friend Sheridan has been a constant attendant on the trial, and gave most important evidence for Hardy."

"Aug. 29. 1795.

"I would not have suffered the post to return without my best and warmest thanks for your letter, if I had been in the way to receive it. No wonder you will say when it brought so large a fee for the speech I sent you. It was not for nothing that I left the full monied term of last November at Westminster. No. I am not better than my neighbours. I was only prudently preaching in these days of innovation for coin not subject to be debased in the esteem and approbation of such men as yourself, and I have so far succeeded by the dint of sheer honesty (for I have little else to boast of), as to bind so fast in chains both genius and criticism, as to be compared to Demosthenes and Cicero, by one of the very few who are capable of estimating either of them, and who ought to take the lead in England, whether ancient learning and eloquence are to be judged of in the abstract, or compared with the shadows which their descended radiance still gives birth to in our latter days. You say, young Sheridan is with you. My son speaks very highly of him; I am truly glad of it, because I sincerely wish him well. His father, in my mind, is one of the honestest and most manly politicians in England, and, I have no

doubt, will persevere in the good cause of reform of parliament, which is the only thing that can give this unhappy country the smallest chance of safety.

"I am now very busy flying my boy's kite, shooting with the bow and arrow, and talking to an old Scotch gardener ten hours a day, about the same things; which, taken altogether, are not of the value or importance of a Birmingham halfpenny, and am scarcely up to the exertion of reading in the daily papers. How much happier it would be for England and the world, if the King's ministers were employed in a cause so much more innocent than theirs, *and so perfectly suitable to their capacities.* Remember me to your worthy and excellent neighbours, the Greatheads. I will forthwith send him the speech. Believe me to be truly, Sir always your much obliged and very sincere humble servant,

"F. E."

The following letters may win a smile from the reader at the follies of the wise, in Erskine's believing young Ireland's forgery, at his forebodings of ruin indulged in common with the Scottish Whigs (to the shame of their second sight be it spoken), and at his vivacious vanity as an author. He might well be proud of this offshoot from his teeming brain, the pamphlet on the Causes and Consequences of the War, for it was carried through forty-eight editions by the magic of his name:—

"My dear Sir, "London, Dec. 31. 1795.

"I had the pleasure of your kind letter on my return to London from Norfolk. If our proposed association is followed up it may make a mighty revolution in public sentiment; but perhaps it may call for more activity in many quarters than it may receive; great exertions and funds to second them, with discipline, supported by self-interest, are fearful odds against voluntary assemblies of men with different views and various opinions. But if it does not succeed, certainly nothing will or can.

"I went to-day to Ireland's from curiosity, and having heard from several quarters that the new Shakspeare was a forgery, and having seen an advertisement from Malone on the subject, all I can say is I am glad I am not the man who has undertaken to prove Mr. Malone's proposition; for I think I never saw such a body of evidence in my life to support the authenticity of any matter which rests upon high authority. I am quite sure a man would be

laughed out of an English court of justice who attempted to maintain Malone's opinion, in the teeth of every rule of probability acknowledged for ages as the standard for investigating truth."

"My dear Sir,

"I am highly obliged and flattered by your most friendly letter. I am almost tempted to regret your kind partiality, because it deprives my book of the unbiassed opinion of so complete and perfect a judge of every thing that goes to the composition of literary merit upon all subjects. When I reflect, however, upon your worth and principles, and upon the value of your friendship, I am better contented to have you as a friend than as a critic. I cannot say how much I thank you for remarking the negligence with which it cannot but be filled. I wonder it is not nonsense from beginning to end; for I wrote it amidst constant interruptions, great part of it in open Court, during the trial of causes. I will forthwith send you a copy from the author; and if, in a leisure hour, you will do me the favour to point out errors, &c. I will thank you most sincerely. I always am,

"My dear Sir,

"Your most obliged and faithful servant,

"T. E.

"15,000 copies have been sold in England, besides editions printed at Dublin and Edinburgh, where the sale has been unusual."

"July 4. 98.

"I forwarded your letter, my dear Sir, to our friend Macintosh, and I enclose you one which he sent to me to forward to you. You will be informed no doubt that his lectures are in proper train, and I am persuaded they will contribute greatly to the dignity of the law, and to the advancement of his own reputation. I am glad that you are likely to accommodate the difference that you mentioned to me. I can scarcely figure to myself a situation in which a law-suit is not, if possible, to be avoided. I have heard with great pain that Lady Oxford has been very ill. She will, I trust, come out again in the spring, with the sun, and like the sun.

"The calamity of Nelson's victory, the greatest that ever befell at least the present ministers of Great Britain, is now beginning to show itself. The few remaining monarchies in the south of Europe are crumbling into dust, and those in the north are in deep consultation whether they choose to follow them. The republic of France, under the nursing care of Pitt, is starting up into new

vigour; and such is the stupidity of Englishmen—I call it stupidity, because it has neither the force nor the genius of madness—that they come to him with their gold and silver as a willing tribute for the deliverance of Europe, whose conquest is finishing, and for the restoration of British security, which is utterly annihilated. It is truly astonishing that the high men of this country, who are attached to the monarchy, and interested in the support of their dignities, do not see the precipice, to the edge of which we are hourly advancing. Adieu, my dear Sir."

Though not a poet in the highest sense of the term, Mr. Erskine was wont to indite stanzas with more success than usually inspires the gentle tinklings of orators and statesmen. From the date of his residence in college—when he wrote the clever parody to his barber upon Gray's ode, "Ruin seize thee, ruthless king," to the octo-syllabic stanzas by which he would fain in old age have whiled away farmers from the cruel sport of shooting rooks—he was never wholly innocent of rhyme.

The following lines were composed by him to the memory of a faithful pony, called "Jack," on whose back he had been accustomed for many years to ride the home circuit: —

"Poor Jack! thy master's friend when he was poor,
Whose heart was faithful, and whose step was sure,
Should prosp'rous life debauch my erring heart,
And whisp'ring pride repel the patriot's part;
Should my foot falter at ambition's shrine,
And for mean lucre quit the path divine;
Then may I think of thee when I was poor,
Whose heart was faithful, and whose step was sure."

His epigram on Lady Payne, whether the impromptu of the hour or not, is also turned with considerable neatness. At Sir Ralph Payne's house in Grafton Street, says Wraxall, the leaders of opposition frequently met; and Erskine, having one day dined there, found himself so indisposed as to be obliged to retire after dinner to another apartment. Lady Payne, who was incessant in her attentions to him, inquired when he returned to the company how he found himself. Erskine took out a bit of paper, and wrote on it —

"'Tis true I am ill, but I cannot complain,
For he never knew pleasure who never knew Payne!"

To his *vers de société*, indeed, a greater permanence is due than to the other gay bubbles of the hour. A favourable specimen has been given in the memoirs of Mat. Lewis.

Among the visiters at Oatlands, we are told, were Lewis, Erskine, and the witty Lady Anne Cullen Smith, who amused themselves in writing one day after dinner what are not inaptly called thread-paper rhymes. It was commenced by the following impromptu from Erskine, on returning Lewis's pencil:

"Your pencil I send you, with thanks for the loan,
Yet writing for fame now and then,
My wants I must still be content to bemoan,
Unless I could borrow — your pen."

His Lordship having indulged in a not very complimentary comparison at the expense of the ladies, was thus answered by Lewis:

"Lord Erskine at women presuming to rail,
Says wives are tin canisters tied to our tail,
While fair Lady Anne, as the subject he carries on,
Feels hurt at his Lordship's degrading comparison.
Yet wherefore degrading? Considered aright,
A canister's useful, and polish'd and bright;
And should dirt its original purity hide,
That's the fault of the puppy to whom it is tied."

To which Lord Erskine immediately rejoined,

"When smitten with love from the eyes of the fair,
If marriage should not be your lot,
A ball from a pistol will end your despair —
Its safer than canister shot."

If no higher meed of praise can be awarded to these verses, at least they have the merit of smoothness, nor would it be easy to find a more graceful mode of relief from the fatigues of professional duty or the ennui of old age. Struck off hastily, and in sport, these sparkling trifles may yet be advantageously compared with the idle lyrics of Bolingbroke, or Chatham, or Burke; from an attentive comparison between whose versification it would appear (and Cicero among the ancients, Fox and Curran among modern rhetoricians, offer additional illustrations of the theory) that, the greater the orator, the [redacted] poetaster.

Returning with Erskine, as after the interval of a long vacation, to the routine duties of his profession, it may not be uninteresting to follow him into that part of the court which was rarely honoured by his visits, we mean the crown side, and take notes of his practice there as counsel for the prosecution. In that arena, we are free to confess, our admiration of his ability is merged in regret at his want of forbearance, and the homage due to his talents is partly neutralised by a sense of their misapplication. We look in vain for the grave address, temperate demeanour, and measured language, which ought to characterise a counsel for the crown. He rushes into the ring a champion armed at all points, and eager to ride down the defenceless, forgetful that the wreath of conquest must be stained with blood, and that the struggle is for human life. Never condescending to enter the criminal court except on a special retainer, he brings with him all the dexterity and rhetoric of the Nisi Prius advocate, and without remorse would seem to wish to make sure of his prisoner, were it even by the snares with which he had caught a civil verdict.

Of this perverted power a signal instance is given in the trial of John Motherill for a criminal assault on Miss Wade, the daughter of an officer in the army, then Master of the Ceremonies at Brighton. The trial, though now scarcely known, excited at the time intense interest, from the high respectability of the party injured, and the singular circumstances of the case.

The lady was under seventeen years of age, had many personal charms, but was of weak intellect. She had been set down in a friend's carriage at her father's door, about ten o'clock at night on returning home from a ball. Unluckily, her friends drove off without waiting to see the door opened; the young lady had returned earlier than was anticipated, and there was no one in the house to receive her. The prisoner, who had been loitering about the door, then came up, took her by the arm, forced her through several streets, making her walk part of the way before him, she being too much fluttered and alarmed to cry out or attempt to escape, till they came to a churchyard, where he effected his purpose.

He detained her during the night, compelling her to enter a bathing machine on the shore, and was secured at day-break the next morning attempting to make his escape. The appearance of the poor girl afforded the strongest presumption of his guilt.

This extraordinary case could not but call forth universal sympathy. To aid a father's natural yearning for vengeance Erskine was brought down special, and appears to have yielded too much to his anxieties as an advocate and his feelings as a man. The trial came on at East Grinstead, at the Sussex Spring Assizes, 1786, before Mr. Justice Ashurst. The reader when he bears in mind that the prisoner's counsel could not then address the jury, and that death was certain to follow conviction, will be startled with us at the glowing language, and angry epithets, of the speech for the prosecution: —

"I beseech you to discharge from your minds every thing you have heard on the subject, and might add, too, every thing that you have seen, for I am told *this wicked and unfortunate wretch* has been this morning led about the streets for the benefit of air, and may probably have excited your compassion. I have no objection that you should compassionate him; a man is more an object of compassion because he is an object of justice; a man is more an object of pity because his crimes are objects of horror."

After eulogising her father with much art as an honourable officer, and enhancing their pity for the sufferer as one not of a strong temperament of mind, he goes on to heighten the sympathy of his hearers by the following portrait: —

"When she is attentively observed by you, you will probably make this remark, that I confess I made myself upon seeing her, that if you could conceive a painter of the finest genius to be desirous of painting the character of artless simplicity and innocence, he would fix upon the countenance and figure of Miss Wade. What a venial offence (he added parenthetically) is even murder compared with that with which the prisoner stands charged!"

* * * * * *

"It seems at first view, and has often struck me as a very

great hardship, that the prisoner's counsel cannot make those observations which, in the commonest civil law action, every man's counsel is enabled to make for him, but the law is much wiser than me or any other individual. Custom comes to the protection of the prisoner, and imposes as a duty upon those who prosecute that, which, perhaps, the law does not enforce, viz. that with whatever strength, with whatever clearness, with whatever conclusion the evidence on the part of the prosecution shall appear to-day, and whatever art and ingenuity may be employed to defeat the ends of justice, I shall, I can make no reply. If I should see the strength of my evidence as clear as the sun at noontide, and if I should see the weakness of any observations, on the effect of any cross-examination of this young lady, so that I might drag him to justice by the power of your understanding with the aid of the communication I could give it, I shall be silent as the grave."

The advocate then draws a highly-coloured sketch of the facts, and proceeds, in a spirit not to be commended, to influence the passions of the jury and insult the prisoner.

"If there is any probability in favour of the prisoner at the bar, in God's name let him have it. But there is no probability in his favour, none that any reasonable mind can for a moment entertain; for let me ask you this question, whether it be consistent with any thing you ever saw, heard, or read of, that a young lady of hitherto chaste and virtuous life, artless, simple, and innocent in her manners, should all of a sudden go out on a tempestuous night — leave her father's house, not to throw herself into the arms of a lover, who had addressed her and endeavoured to seduce her, but into the arms of a stranger with nothing to recommend him, with nothing upon earth to captivate or seduce the fancy? It is repugnant to reason to believe it — it is a thing incredible, that the most viciously disposed woman could go into the arms of the squalid wretch before you! I do not mean to insult him by the expression; his wickedness renders him an object of compassion. But if he is not to be insulted, a virtuous, innocent, miserable, ruined lady is not to pass unredressed; nor the breach of God's laws and the country's to pass unre-

venged. If he dies, he suffers less than her, who lives Oh fie!"

The sentimental exclamation of Erskine might have been echoed back by the squalid wretch at being thus designated.

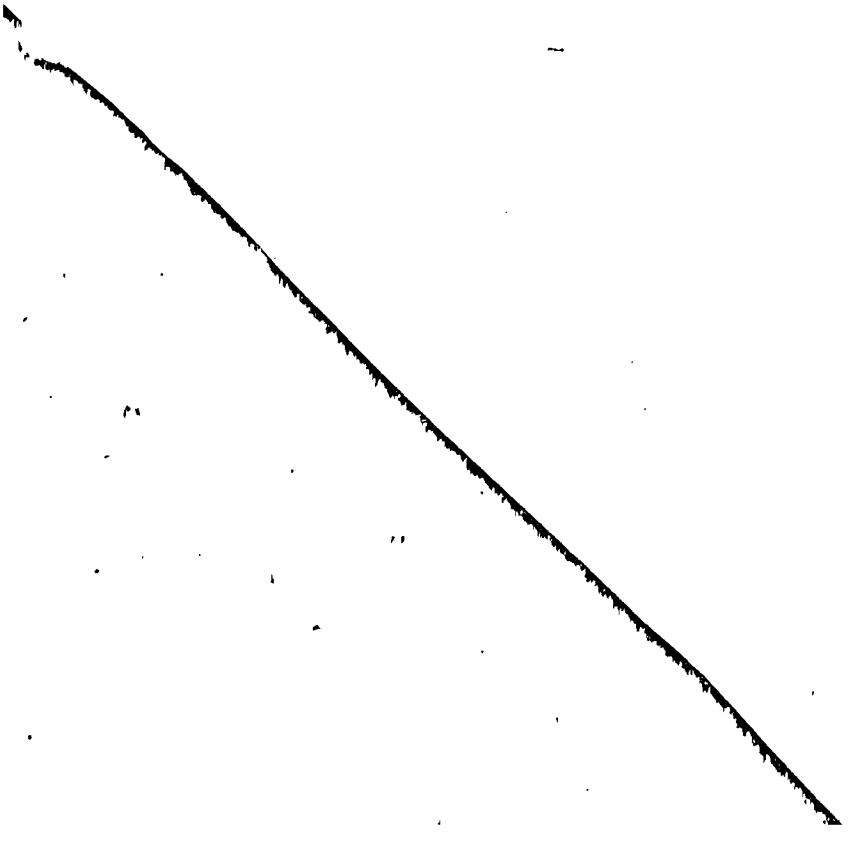
Fearful that startling improbabilities might be disclosed by his client's imbecility of mind, he concluded with a threat: —

"It is a solemn and an unpleasant duty. You are humane, I have no doubt, and I am glad you are so. Those who are not humane cannot be just. Justice is all I ask at your hands. If in your consciences you believe that the prisoner at the bar did commit this offence, so shocking to the individual and repugnant to all the principles of justice, you are bound in duty to God and to your country to convict him. If you can go home to night and satisfy yourselves that this young lady either has not been violated in point of fact, or that, having been so, it has been with her own consent; if you can persuade yourselves of that absurd and improble proposition, after you shall have heard the evidence, I shall not call your mercy in question; it is a matter which will rest with your own consciences."

The jury withstood this elaborate assault. After a long examination of the unhappy young woman, conducted by Erskine with his accustomed skill, they remained unconvinced that she had resisted to the utmost of her strength. They consulted together for half an hour, and then, after stating their scruples to the Court, and being informed that there was no middle course, reluctantly returned a verdict of acquittal.

END OF THE FIRST VOLUME.

00023625



Digitized with financial assistance from the
Government of Maharashtra
on 06 February, 2016